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HEARINGS

Before The

COMMITTEE ON PUBLIC WORKS

UNITED STATES SENATE

BUSINESS MEETING

Washington, D. C.

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EXECUTIVE SESSION

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BUSINESS MEETING

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WEDNESDAY, SEPTEMBER 29, 1971

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United States Senate
Committee on Public Works
Washington, D. C.

The committee met at 11:00, pursuant to call, in room 4110, New Senate Office Building, Senator Jennings Randolph (chairman, 57) of the committee) presiding.

Present: Senators Cooper, Boggs, Buckley, Stafford, Tunney, Gravel and Muskie.

Present also: Thomas C. Jorling, minority counsel and Leon G. Billings and Bailey Guard, professional staff members.

The Chairman. A pleasant morning, gentlemen. We are gratified that Senator Stafford sits with us as a member of this committee. We know that your attention to our many problems -- that of course are the problems of Congress -- will be helpful, Senator, to us.

We welcome you personally and as members of the committee. We need not tell you that the counsel of new members is as eagerly sought and appreciated as the counsel of those who have served on the committee a long period of time.

1 Senator Stafford. Thank you, Mr. Chairman. It is a real
2 privelege to be here.

3 Senator Cooper. I would like to join Senator Randolph on
4 behalf of the minority of the committee. We welcome you. We
5 know that we will gain by your experience. We think you will
6 enjoy the work. We are gläd to have you.

7 Senator Stafford. Thank you, Senator.

8 Senator Muskie. We are delighted to have people from both
9 sides of the aisle. We need help.

10 The Chairman. Thank you, Senator Cooper and Senator Muskie.
11 I know all of us share the same thoughts.

12 There are several votes this afternoon which I think would
13 be in the nature of interruptions of the committee if we would
14 have to go from this building to the floor.

15 With your understanding we will meet at 2:00 in S-126.
16 Apparently there will be three and possibly four roll call votes.
17 I believe that we can accomplish more if we are in proximity to
18 the floor.

19 Senator Boggs. Where was that, Mr. Chairman?

20 The Chairman. That is S-126. Gentlemen, we were in session
21 last Thursday. We are now coming back to the work which we are
22 trying to do with dispatch and yet with reasoned consideration.

23 I think that if there is no desire for a member to speak at
24 this time, I will ask Ed and Leon to proceed in the way that you
25 would want in bringing these matters to our attention in logical

1 Senator Muskie. Thank you very much, Mr. Chairman. Last
2 time I think we agreed upon a procedure to bring before the
3 committee the issues raised by Senator Buckley. I think the
4 staff has focused on trying to do that.

5 As I understand it, Senator Buckley has prepared a modifica-
6 tion to his proposal that he would like to present and then have
7 the committee vote on. The staff would prepare the series of
8 issues that are raised by the Buckley proposal to which we could
9 then proceed. If that is Senator Buckley's understanding, that
10 is agreeable with me.

11 The Chairman. Jim, how do you feel about that procedure?

12 Senator Buckley. That would be perfectly satisfactory.

13 Senator Cooper. That is all right.

14 The Chairman. Let us move forward then.

15 Senator Muskie. I might suggest that Senator Buckley present
16 his modified proposal so that we might have such discussion as
17 we might desire and then proceed to vote on it.

18 Senator Buckley. Mr. Chairman?

19 The Chairman. Yes, sir?

20 Senator Buckley. The proposal which I would offer now is one
21 that was discussed with Senator Baker last Friday. I think it
22 still represents our joint feeling that the bill still follows
23 the philosophy of making 100 per cent Federal financing availa-
24 ble.

25 We felt that what we would propose is that we retain the

1 existing formula for Federal grants, namely a basic 30 per cent
2 plus an additional 25 per cent in exchange for a state commitment
3 of 25 per cent, bringing the total up to 80 per cent.

4 We understand that the states would come forward today
5 representing approximately 90 per cent of the proposed contemplated
6 construction. So it would appear that this existing formula
7 would have the states to be induced through the cooperation.
8 That still leaves 20 per cent in most of the country and up to
9 70 per cent in other areas.

10 We would therefore propose that there be a Federal agency
11 which would make available the financing of that balance on the
12 same basis that we discussed at our last meeting. This would
13 make it possible for any municipality or district which for one
14 reason or another could not proceed with the financing on its
15 own under the statutory capability or an unwillingness to go to
16 the voters to seek authorization of the new bond issue and would
17 have the alternative request.

18 We would also propose that the financing agency extend the
19 financing and would have authority to waive interest on loans in
20 those areas such as the one that Senator Cooper mentioned the
21 other meeting where the community simply cannot inherit the
22 burden of interest as well as the payment.

23 The Chairman. Jim, who would make the determination of the
24 ability of the community to be able to function financially?

25 Senator Buckley. Whoever would be in charge of the agency.

1 Somebody has got to make that decision. It would be made in
2 conjunction with state and local officials.

3 The Chairman. That is what I am asking. Would it be a
4 working agreement with other than the one person?

5 Senator Buckley. That is right. That sums up the proposal.

6 The Chairman. Senator Cooper, do you have any comment?

7 Senator Cooper. In our discussions in the last days I think
8 I expressed my views but not very clearly.

9 Senator Buckley. We have not included a provision. We have
10 excluded a provision for the ultimate right of the Federal
11 Government to move in, which I believe was the subject of
12 Senator Cooper's objection.

13 Senator Cooper. It is my view that you cannot force upon a
14 community a situation where a community which did not undertake
15 the obligation.

16 Senator Muskie. Mr. Chairman, I would like to ask Senator
17 Buckley about his proposal. As the present formula has been
18 interpreted, it qualifies state loans as well as state grants.
19 Would this proposal retain that interpretation, Senator Buckley?

20 Senator Buckley. Yes, it would. It is based very much upon
21 your pitch for state responsibility. It seems to me that we
22 should allow each state the maximum flexibility of how it is
23 going to implement its own operation.

24 Some states, perhaps, would find the loan formula reasonable.
25 In other states it might not be reasonable. Our understanding is

1 that as a condition for getting 30 to 55 per cent Federal
2 grant, the states would have to submit an implementation plan
3 which met with the approval of the administrator. That implemen-
4 tation plan says that the state assumes the responsibility for
5 seeing that these communities or regions will be serviced by
6 this kind of facility.

7 Then it is up to the state, working with the local communit-
8 ies, to implement that plan on schedule.

9 The Chairman. Do you enter this for yourself and for Senator
10 Baker?

11 Senator Buckley. Yes, exactly.

12 The Chairman. I think that without discussion -- although
13 we do not want to close discussion -- I am ready to vote. What
14 about others who are here?

15 Senator Muskie. I would like to just say about three sent-
16 ences.

17 The Chairman. Yes.

18 Senator Muskie. I want to describe the choice as I understand
19 it to be that Senator Buckley's amendment proposes. The first
20 choice is a choice between grant formulas. I guess we have gone
21 through that sufficiently in subcommittee so that it is not
22 necessary to get into that extensively now and I won't.

23 Coupled with that is the proposal to liberalize EPA to have
24 it available, really, at the choice of the community rather than
25 the guidelines set by the Federal Government. In that way it

1 makes Federal loans more freely available.

2 Finally there is the waiver of interest. I still favor the
3 grant formula that the subcommittee prepared. I don't know that
4 I would be too concerned about liberalizing EPA, which is now
5 before the Banking and Currency Committee. But I gather Senator
6 Buckley wants to tie the two together in his proposal. I favor
7 the formula which the subcommittee prepared.

8 The Chairman. Are there comments from the other members?

9 Senator Tunney. Just to make my position clear, Mr. Chair-
10 man, I happen to believe that there should be a higher grant
11 formula. On the other hand, I very strongly believe that we
12 should provide 100 per cent Federal financing if the community
13 is not able to get financing or if the community feels it cannot
14 afford other financing.

15 I happen to know a number of communities in my own district
16 which would vote down bond issues. I have just spent the weekend
17 in California in San Diego County and in Los Angeles County. I
18 know of many school districts which are voting down bond issues
19 and which haven't passed any bond issue of any kind for the past
20 two years.

21 So therefore I very strongly favor the 100 per cent Federal
22 financing. Consequently, although I do not agree with the
23 Buckley formulation with respect to the grant formula, I am
24 going to vote for it because I think that the 100 per cent
25 Federal financing is most important.

1 The Chairman. Are there comments from other members?

2 Senator Boggs. Mr. Chairman, I tried to express my comments
3 in a general way last week. But I think Senator Cooper expressed
4 my feelings.

5 The Chairman. May we have it understood that we are operat-
6 ing with less than a quorum. Eight persons are here. I would
7 not attempt to, you know, urge you to do it. But if you permit
8 us to have proxys stand undelivered and later in the day if there
9 are those members who come in, why, they would be able to vote.
10 I think that is an equitable way. Is that all right with you,
11 Jim?

12 Would you call the roll, please, on the Buckley-Baker propos-
13 al?

14 Mr. Huyett. Senator Randolph?

15 The Chairman. No.

16 Mr. Huyett. Senator Baker?

17 Senator Buckley. Yes.

18 Mr. Huyett. Senator Bayh? Not here. Senator Stafford?

19 Senator Stafford. No.

20 Mr. Huyett. Senator Bentsen, not here. Senator Boggs?

21 Senator Muskie. Senator Bentsen's proxy is "no."

22 Mr. Huyett. Senator Boggs?

23 Senator Boggs. No.

24 Mr. Huyett. Senator Buckley?

25 Senator Buckley. Yes.

1 Mr. Huyett. Senator Cooper?

2 Senator Cooper. No.

3 Mr. Huyett. Senator Dole, not here. Senator Eagleton?

4 Senator Muskie. "No" for Eagleton.

5 Mr. Huyett. Senator Gravel?

6 Senator Gravel. No.

7 Mr. Huyett. Senator Jordan? Senator Montoya?

8 The Chairman. Is that an open proxy to me? It is "no."

9 Mr. Huyett. Senator Muskie?

10 Senator Muskie. No.

11 Mr. Huyett. Senator Tunney?

12 Senator Tunney. Aye.

13 Mr. Huyett. Senator Weicker, not present. The motion fails,
14 9 to 3.

15 The Chairman. Jim, I think it was wholesome of you to inject
16 this thinking into our study here. Presumably there might be
17 an attempt made at a later time, possibly on the floor, in
18 reference to this.

19 Senator Buckley. Thank you.

20 The Chairman. Ed, would you proceed?

21 Senator Muskie. The combined staffs have prepared, Mr.
22 Chairman, a series of questions that I think all members have
23 before them, entitled "Agenda For Title II."

24 This is a little different than I asked them to do. I asked
25 them to prepare questions for a vote. These are simply

1 questions that would stimulate discussion. Very few of them are
2 in such form that you can vote "yes" or "no" on them. I don't
3 know to what extent the committee wants to go through these lists
4 of questions for the purpose of formulating issues for a vote.

5 I would like to suggest that what is before us now -- the
6 Buckley amendment having been voted down -- is the committee
7 print on the Federal grant formula. In effect, the committee
8 formula stands on its own feet. I have no objection to that if
9 that is the desire of Senator Buckley or any other members of
10 the committee.

11 Senator Cooper. You mean on the subcommittee proposal?

12 Senator Muskie. Yes.

13 Senator Cooper. I think I would like to suggest a proposal.
14 The subcommittee would start with 60 per cent and add additional
15 amounts as they were asked for by the states up to 75 per cent.

16 I have had second thoughts on this. Bailey Guard here might
17 also be able to talk on this subject. I will say first that in
18 talking to the administration, they want very much to hold to
19 the President's allocation formula. But they are very strongly
20 against any Federal allocation above 60 per cent.

21 My thinking was that the formula which we agreed upon would
22 find that the richest states would have the greatest capability.
23 They would be the ones who would be most likely to add the
24 additional funds.

25 So I don't know that we have any great help for the poorer

1 states and the poorer communities. Also, to the extent that we
2 increase the Federal allocation, unless the administration or
3 Congress voted larger total sums, I think this would affect the
4 amount available to the local communities.

5 Bailey Guard has talked to me about this. I want to suggest
6 this possibility for consideration, that we stick with the 60
7 per cent. But then this would be allocated to the states upon
8 condition that the states provide another 20 per cent. The
9 states would have some authority and discretion to provide for
10 different communities the amounts they actually need, the poor
11 communities more, the rich communities less.

12 In the event that the state does not participate, then the
13 communities would come directly to EPA, to the administration.
14 Then -- taking something from Senator Buckley -- if that commun-
15 ity needed 20 per cent more, they would get it. I don't know if
16 I made myself clear, whereas we provide the same amount for any
17 community, rich or poor.

18 I think the bill as written to be to the advantage of the
19 richer states and not be of any real value to the poor states.
20 This is rather a new proposition. If we could allocate to the
21 communities according to need, I think it might be more flexible.

22 Senator Tunney. Senator, would they be able to get that loan
23 even if it could not be demonstrated that they were a poor
24 community, if the state did not come through with its share of
25 the funds?

1 Senator Cooper. I think it would depend upon their financial
2 capability.

3 Senator Tunney. Using the EPA formulation that they would
4 have to be a poor community to get it.

5 Senator Cooper. I think this would take care of an incentive
6 and a disincentive also. It would also provide greater flexi-
7 bility in the allocation of funds to the community to depend on
8 its financial capability.

9 Senator Muskie. I am not sure I understand, John, what the
10 pressure on the states would be. If I may review it, what I
11 think you said is you propose a 60 per cent state grant in any
12 case. There is no increase in the Federal grant under any
13 circumstances.

14 Senator Cooper. 60 per cent to the states, on condition that
15 they add 20 per cent. Then they would have 80 per cent of
16 whatever total fund there was. Then with that money the states
17 could make available to each community whatever they felt was
18 required by each community.

19 Senator Muskie. You say you add 20 per cent. By that you
20 mean the state grant?

21 Senator Cooper. Yes.

22 Mr. Guard. Senator, this would require some shift in the
23 program. It would contemplate providing broad grants to the
24 states for the total allocated as we have in the bill. Our
25 allocation formula provided that the states would pass through

1 the 60 per cents to each community. You would have the Federal
2 Government doing this with each municipality. I recognize that
3 this is some shift, but it would really make it more of a state
4 program. Let them handle these applications and pass on them.
5 Each state would be required to provide 20 per cent or to make
6 expenditures equivalent to the 20 per cent.

7 In other words, match each state dollar for every three
8 Federal dollars rather than give the 20 per cent to each
9 community. They could put up the whole remaining 40 per cent
10 for a poorer community or for a rich community they might not put
11 up any. Or they might decide to take all of it across the board.
12 But that would be their decision with the state money.

13 Now, in the event the state refused to do that or didn't,
14 why then the communities could come directly to the Federal
15 Government as they do now for the 60 per cent.

16 So one of the dis-incentives would be that they would then
17 come to the Federal Government who would handle it directly and
18 presumably make whatever arrangement you wish with the remaining
19 20 per cent.

20 Mr. Billings. Correction, Bailey, in the present situation
21 the money is allocated to the state. The state establishes
22 priorities and the community gets its money depending on where
23 it is on the state's priority list.

24 Now, where the change would come in your proposal, the
25 significant change, if the state doesn't put up any money, it would

1 no longer have the authority to determine those priorities. The
2 administrator would determine the priority for distribution of
3 the state's allocation in that state.

4 Mr. Guard. That is a disincentive that could be applied
5 to this plan or the plan in the committee bill now.

6 Mr. Billings. That is correct.

7 Mr. Guard. And we didn't talk much about it. That is
8 probably a good one.

9 Senator Muskie. The effect of the proposal is to eliminate
10 the incentive of an additional Federal contribution since you
11 rely wholly upon the question of whether or not a state is will-
12 ing to pay 20 per cent of the cost in order to retain control of
13 the priorities, isn't that it? That is about what it amounts to.

14 Mr. Billings. Essentially, yes.

15 Mr. Guard. Yes.

16 Senator Muskie. The question I raise about that is not only,
17 you know, how much of a stimulus that kind of a disincentive
18 would provide continuing our present state grants.

19 But secondly, you know, is it in the interest of the
20 program -- I haven't focused on this proposal before -- to risk
21 taking the state planning function out of the program if the
22 states who are not now putting out money might decide that is
23 too high a price to pay to get input on the planning?

24 Is the program well-served by limiting the state planning
25 functions, setting priorities for state input?

1 In other words, are we risking cutting off our noses to spite
2 our face in this situation? Do we want state involvement in
3 planning?

4 Senator Cooper. Now that you raise the question, if we could
5 find a way to have a real incentive for the state's putting up
6 additional 20 per cent instead of just having additional alloca-
7 tions and which would also apply a little more flexibility to
8 the state if the 20 per cent would be put up.

9 Senator Boggs. How many states right now are there which do
10 not participate in the plan or in contributions? Do you have any
11 information on that?

12 Mr. Jorling. Between 15 and 20 do not. They put up neither
13 a grant or a loan program which qualifies.

14 The Chairman. Gentlemen, would you allow me to move into
15 the rules of our committee just briefly? There are nine members
16 of the committee present. We have sought to have a quorum here
17 for the further discussion of that matter that we had last Thurs-
18 day.

19 Would you take the changes that we have agreed on, at least
20 in part? Mr. Huyett will just explain the work that we have done
21 here at the staff office level.

22 Mr. Huyett. The other day when the rules were discussed,
23 there were several suggestions made. One was in Rule 2, in
24 which Senator Cooper felt there should be a 24-hour notice and
25 then a waiver in an emergency by the Chairman with the concurrence

1 of the ranking minority member.

2 We have in Rule 4 one other suggested change to the rule
3 here in front of you. That is in 4 (b) where we have "chairman
4 of a subcommittee." We have one subcommittee that has a vice-
5 chairman. So we have included in there the "vice chairman or
6 ranking minority member."

7 The other change was in Rule 3, in which we put in a minimum
8 of 24-hour notice. Again, as Senator Cooper suggested, ahead of
9 the word "membership" in Rule 16 ---

10 Senator Cooper. The waiver of that in case of an emergency.
11 We understand that.

12 Mr. Huyett. We have attempted to include in the rules
13 changes which the members have commented on. The plan that you
14 have in front of you, with the exception of "vice chairman," are
15 the rules that are more or less agreed to.

16 The Chairman. We try to accomodate all members time-wise to
17 study these. I hope we can have an approval this morning. It
18 would be helpful for your Chairman.

19 Senator Cooper. Mr. Chairman?

20 The Chairman. Yes?

21 Senator Cooper. I have an objection. On page 2, Rule 6,
22 paragraph (b) it says "At the discretion of the Chairman, after
23 consultation with the ranking minority Member, Members who are
24 unable to be present and whose vote has not been cast by proxy
25 may later have their position recorded on any vote."

1 I have no trouble with that, if it is understood that if a
2 decision had been properly reached, either for or against an
3 amendment or for or against a bill, the fact that they could
4 later record their vote could not change a decision that had
5 already been made.

6 The Chairman. John, I am sure that is the understanding.
7 At least, that is my understanding. Would there be a difference
8 of opinion on it?

9 Senator Dole. It should be that way, I think.

10 Mr. Huxett. That is the reason we changed the word to
11 "position" to "vote." If you are reporting on a vote, then that
12 would show the vote and the position.

13 Mr. Billings. Basically you are using the formula on the
14 Senate floor.

15 The Chairman. Yes, that is right.

16 Senator Cooper. If three or four do this, this will not
17 change the outcome?

18 The Chairman. It will just make their positions known. I
19 have no desire to move us forward to a vote if there are other
20 matters.

21 Senator Dole. I do. I move that it be implemented.

22 Senator Gravel. I second.

23 The Chairman. Senator Dole moves that it be approved.

24 Senator Gravel seconds the motion. Will all who approve it say
25 "aye?"

1 Voices. Aye.

2 The Chairman. Are there any opposed? It is unanimous.

3 Thank you very, very much.

4 Now, I believe you were asking questions, Caleb, were you
5 not?

6 Senator Boggs. I wanted to see the picture on the number of
7 states participating in the planning process and the actual
8 participation, contributions, grants to local communities.

9 Mr. Jorling. As of April 14, 1971, there were 31 states that
10 had matching grant programs. At that time there were six states
11 with programs pending before the legislature. They were Montana,
12 Nebraska, Kansas, Oklahoma and Texas. I learned that Delaware
13 has not qualified so presumably the list could be closer to 40
14 now that are not participating.

15 Mr. Billings. The Oklahoma and Texas program I know for sure
16 are not grant programs.

17 Mr. Jorling. And Tennessee, Louisiana and Florida.

18 Senator Boggs. I have always been very much in favor of
19 encouraging the states to participate. I think that is important.
20 Just this past weekend in my own little state I attended an
21 annual meeting and banquet of what they call the "Deleware League
22 of Local Communities," which has really developed in the last
23 four or five years.

24 They had the counties, municipalities, local school districts.
25 All those people had a big turnout Sunday afternoon and Sunday

1 evening. There were about 300 people. There were councilmen,
2 mayors, district representatives and so forth.

3 They have a full-time director now and a full-time office
4 staff. One of their things is to really be for local communit-
5 ies, local government working with the state legislature, which
6 is something we never had.

7 I think the local community's presence, judging from this
8 type of development, is going to be felt much more. Of course,
9 it is contagious. They used to turn down these school bond
10 things in Delaware right and left. Now they are moving in a
11 different direction. They are especially interested in these
12 environmental matters, especially the sewer problem and solid
13 waste disposal, which is a big problem in all these small
14 communities.

15 I was encouraged by this. They feel that the state should
16 get in there too and help, not just leave them dangling. After
17 all, they are all agencies of the state. I would be inclined,
18 it seems to me, to encourage the state to participate, to give
19 incentive to make whatever contribution they can to the grant
20 the Federal Government is able to make.

21 I think it is important to remember this in the planning.

22 Senator Muskie. I think so, too. It seems to me that to
23 some extent, at least, the states have not rallied to this program
24 as they might have because of the inadequacy of Federal funding.
25 "We are not going to get the money anyway, so why should we get

1 that concerned about it?"

2 So I am encourage by the recent evidence that the states
3 want to get involved with their share of Federal funding. I
4 think it would be unfortunate if we were to lose the Federal-
5 state programs which now exist and be nipped in the bud.

6 So I agree with Senator Boggs that we have to retain the
7 incentive. I am not sure -- for the reason I have stated -- that
8 the kind of disincentive that Bailey Guard talks about is suffi-
9 cient.

10 I wonder whether it would be helpful, John, to drop the
11 base back from 60 to 55 and then build on that, to 15 per cent
12 additional.

13 Senator Cooper. How would that work out?

14 Senator Muskie. You would get 55 per cent of the base
15 Federal grant and up to 15 per cent more. So the maximum would
16 be 30. That would be 85. 15 for local. That would be 15, 15,
17 15.

18 Senator Boggs. Then in a pinch if it needed to the local
19 could go to EPA.

20 Senator Muskie. They could come to EPA. That would move in
21 the direction that the Administration would like us to move.

22 Senator Boggs. That sounds good to me.

23 Mr. Guard. Another alternative stated another way, you could
24 have a 60 per cent grant, Federal grant, and penalize the state
25 by cutting it from 60 to 50 per cent for any state that fails to

1 provide this 20 per cent. The consequence would be 60 per cent
2 Federal, 20 per cent state and 20 per cent local. I think that
3 is reasonable. There is a little different formulation.

4 Senator Cooper. In the bill from subcommittee there would
5 be 60 per cent from the Federal Government for the community.
6 The states would not get into the program. Is that correct?

7 Senator Muskie. Yes. Under the 55 per cent it would be 45
8 per cent the local would have to pay, which would probably be,
9 I would think, intolerable for most communities.

10 Senator Cooper. What about Bailey's idea, 60-20-20, if that
11 could be developed?

12 Mr. Guard. The administration told us this morning that 60
13 per cent was maximum, that they prefer, that they can get
14 approval on.

15 Senator Boggs. What is that again, Senator, or Bailey?

16 Mr. Guard. Maximum, 60 per cent Federal, 20 per cent state.
17 That makes 20 per cent for the communities.

18 Senator Boggs. And if the state doesn't come up with the
19 20 per cent?

20 Mr. Guard. I think the whole disincentive question is not
21 very good in any of these proposals. The same arguments lie
22 against them all to different extents.

23 Senator Boggs. What you are saying is 60 per cent and then
24 20 per cent ---

25 Mr. Guard. And if the state fails to come up with its 20,

1 that the 60 be reduced by 10 per cent to 52 per cent.

2 Senator Muskie. What you are doing is putting the penalty on
3 the community, not on the state.

4 Mr. Guard. That is exactly what we have got in the subcom-
5 mittee bill.

6 Mr. Billings. I might add, Mr. Chairman, all reduce the
7 amount to the amount that the states are personally putting up.
8 I would think whatever you would do, unless you would have
9 additional Federal sums to balance it off, you would have to
10 reduce those that are paying 25 or 30 per cent.

11 Senator Muskie. Taking it back from the community because
12 the state fails to act, you are going to get a real howl from
13 the community. "What are you punishing us for?" To promise
14 them something and then take it back, that would be risky
15 business.

16 Senator Buckley. You could start with 50 and put in an
17 extra 10 in consideration of the 20.

18 Senator Muskie. The psychology of the thing is very import-
19 ant.

20 Senator Buckley. Right.

21 Senator Muskie. It is true that in either case you are
22 penalizing the community or not rewarding the community because
23 of the state's failure. There is a different psychology here,
24 I think. I think you would really get a howl.

25 Senator Cooper. Could you work out a formula where, in any

1 event, that you would end up with the community at 20 per cent
2 under the formula we worked out?

3 Senator Muskie. Another possibility that I don't favor at
4 this time is to let the state contribution take the form of
5 either grants or loans. If you do that, you would make it
6 easier for the state. You might risk losing some state grant
7 programs and of course the Federal contribution would still be
8 grants. This would also make it easier for the states to come
9 in.

10 You could make the Federal contribution interest-free loans
11 rather than grants. All of that is just fudging. I would really
12 like to see us take up the subcommittee formulation. I would
13 like to see that as this committee's target. I think it is
14 pretty good in giving the states the option of doing it by
15 grants or loans, but only 1 per cent at a time. If they want to
16 put up 1 per cent of the cost, then they get 1 per cent more from
17 the Federal Government, up to 15 per cent. That is their option.
18 They have got the whole range of 15 per cent.

19 Senator Cooper. Could you make the range 10 per cent so the
20 result would come out 60 per cent, 10 per cent from the state,
21 10 per cent from the Federal Government, loan or grant, and then
22 leave 20 per cent to the community?

23 Of course, that would bar the richer states from putting up
24 more money.

25 Senator Muskie. Let us see. Let us take that again, John.

1 You are talking about 60 per cent.

2 Senator Cooper. The formula we were talking about with
3 additional efforts from the states to match it.

4 Senator Muskie. Make it 10 per cent more instead of 15.

5 Senator Cooper. You get to the point where you have got 60
6 grant and whatever the states did, I would say the Federal grant
7 or loan, following Senator Buckley's suggestion, leave 20 per
8 cent with the community. I think that is a reasonable amount.

9 Senator Buckley. There is no evidence that they can't come
10 up with that 20 per cent.

11 Senator Cooper. I think when you get to 10 per cent, you
12 are getting close to Senator Buckley.

13 Senator Muskie. I wouldn't resist that too strongly, John,
14 if it meets with the favor of the committee. It is only 10 per
15 cent more Federal, which is a move in the direction of the
16 administration's position. 10 per cent state might be a little
17 more reasonable target for the state budget people.

18 Senator Boggs. They could go further if they wanted to.

19 Senator Muskie. They could go further if they wanted to.

20 Senator Cooper. It might cause the poor states to really put
21 up the money.

22 The Chairman. I would like to endorse what Senator Cooper
23 and you, Ed, perhaps are thinking. It is a fair effort to
24 stimulate participation. I think it has value.

25 Senator Tunney. Are we talking about a dollar-for-dollar

1 amount, up to 10 per cent?

2 The Chairman. 10 per cent.

3 Senator Muskie. Maybe we can get some other expression. I
4 go along with it.

5 The Chairman. Tom, would you have any feeling about this
6 matter?

7 Senator Eagleton. No, I am amenable.

8 The Chairman. Fine. Would you, Jim, have any problem?

9 Senator Buckley. This is where I wanted to see us move this
10 morning.

11 Senator Boggs. I agree.

12 Senator Muskie. I think we are ready to buy it.

13 Senator Cooper. Remember the advice to the lawyer: "Don't
14 ask another question."

15 Mr. Billings. Mr. Chairman, may I ask a question at this
16 time?

17 The Chairman. Yes, indeed, Leon.

18 Mr. Billings. In Senator Cooper's formula, the state would
19 be required to match 10 per cent. Would that 10 per cent be on
20 a project-by-project basis? In other words, would the state be
21 required to provide 10 per cent of all projects assisted in the
22 state or would it be 10 per cent of the total allocation which
23 the state could distribute through projects on the basis of need?

24 Senator Buckley. I would prefer the latter. It would give
25 the flexibility in the poor states.

1 Senator Muskie. I understood Senator Cooper's proposal to
2 be that in the subcommittee print, except for the percentages.

3 Mr. Billings. The subcommittee print is silent or vague on
4 the question. Under existing law it has to be 10 per cent of
5 the total projects constructed in that state each year and
6 allocated on a project-by-project basis.

7 So the state does not have the flexibility of allocating on
8 the basis of need. In other words, the committee would have to
9 recommend a departure from the existing procedure, if the state
10 was to allocate on the basis of need.

11 Senator Boggs. The state under existing law determines
12 priorities.

13 Mr. Billings. When the project goes from 60 to 70 per cent,
14 that project itself must get 10 per cent additional from the
15 state.

16 The Chairman. I could modify my position on this. I would
17 prefer that it be project-by-project. I just think that is the
18 way this type of assistance should be developed.

19 Senator Muskie. I really think so. I have not been asked to
20 consider this proposal. But it seems to me, in the first blush,
21 and I might review my position, is that you would have a response
22 to political pressure.

23 If you say State X is going to get a hundred million dollars.
24 I don't know if that is realistic or not. The state provides
25 another 20 million dollars overall. The program, regardless of

1 the distribution formula which reflects needs in the state, would
2 have every area thinking it is in dire need.

3 So what guidelines ---

4 The Chairman. You might have some criterion that would be
5 discriminatory.

6 Senator Muskie. What area has the most political muscle,
7 is most persuasive. I don't want to put the Federal Government
8 in the position of endorsing that kind of approach.

9 Senator Tunney. I agree with Senator Muskie's opinion on
10 that. I think in my state I can see a situation very easily
11 where the areas with the most clout receive the greatest benefit.

12 Senator Muskie. I think that was implicit in the subcommit-
13 tee action.

14 The Chairman. That is a clarification?

15 Senator Muskie. Yes. I would move, Mr. Chairman, that all
16 these percentages be based on a project-by-project basis.

17 The Chairman. You have heard the motion. Is there a second
18 to the motion?

19 Senator Gravel. I second.

20 The Chairman. The motion has been made by Senator Muskie
21 and seconded by Senator Gravel. Is there comment before the vote?

22 All those in favor?

23 Voices. Aye.

24 The Chairman. All opposed? Then it is unanimous. Thank you
25 very much.

Mr. Billings. Mr. Chairman, the next issue is on the allocation of funds to the states. That would be the Blue Plains amendment or the question of allocating a portion of the Federal funds on the basis of need. This comes up in the form of Senator Eagleton's amendment which is a general amendment.

Senator Eagleton. This is not the good Eagleton amendment which I will discuss at another date. This is a mission of mercy amendment. Mr. Chairman, it is my understanding that Senator Beall, were he still with us, would back me up on this. The other day, before he left the committee, on the allocation formula if you take what Maryland's share would be under this formula, the entire Maryland share and then some would be consumed on the so-called Blue Plains project, leaving nothing over for Baltimore or any other part of Maryland. There wouldn't even be enough in the pot to cover all of Maryland's share of the plan.

It would not consume all of the Virginia share, but a substantial portion of it. There would be very little left for Norfolk or Richmond or some other place.

I am told by the staff -- Leon or somebody -- that there are two or three other situations around the country of this great magnitude like Blue Plains that superimpose an enormous onerous burden on a given state or a given region that is in a multi-state area like Blue Plains.

So what I proposed in essence is this: that for the first

1 two years of the bill \$200,000,000 may be allocated in a
2 discretionary fund as it says, "may be allocated...by the
3 Administrator to assist in the construction of projects employing
4 advanced treatment methods for the treatment of wastes on a
5 regional scale to enable areas with especially severe water
6 pollution control problems."

7 Under these first two years, I believe there would be enough
8 money left in the reallocation fund, where the state has
9 something to take care of special need situations.

10 But for the first year or so there is nothing much to
11 reallocate until you see who isn't using up their share.

12 I think -- in the interest of the Blue Plains project and
13 others of similar type -- there is such a need.

14 I put a qualifier in (2) down here that says "Notwithstanding
15 the provisions of subsection (b) (2) of this section, no sums
16 shall be allotted under subsection (d) (1) of this section in any
17 fiscal year in which the sums available for reallocation under
18 subsection (b) (1) equals or excels \$200 million."

19 That is, if there is enough to do it out of the allocation
20 money, you do it out of that.

21 Mr. Jorling. I think that would need one qualification.
22 That is, "allocation of funds for the previous fiscal year"
23 because you will not know for 18 months or 12 months depending
24 on the year whether or not there will be that kind of money
25 available out of the allocation funds.

1 Senator Eagleton. Generally I am a little leary about
2 discretionary funds especially if they are huge. They can be
3 abused by anybody whether it is Republican or Democrat or
4 whatever. I am not enamored of overly abundant discretionary
5 funds.

6 However, I don't know how you can get around it when there
7 are projects like Blue Plains. I don't see how you can take
8 every dime out of Maryland and then some and not have a penny
9 left over for Baltimore or other parts.

10 The Chairman. Tom, I think your explanation of your proposal
11 is understood by me. I would be for it.

12 Senator Boggs. I would be for it, Mr. Chairman.

13 The Chairman. I think you are just being realistic.

14 Senator Boggs. Something would have to be done. I guess
15 this is as good a solution as any.

16 Senator Eagleton. I move it then, Mr. Chairman. I will leave
17 it up to the staff to perfect the language.

18 The Chairman. You have heard the motion by Senator Eagleton.
19 It is seconded by Senator Tunney. Is there any questioning?

20 All favoring the amendment, would you say "aye?"

21 Voices. Aye.

22 The Chairman. Opposed? Then we report it unanimously.

23 Senator Eagleton. That was from the law offices of Eagleton
24 and Beall, Baltimore.

25 The Chairman. The amendment is approved.

1 Senator Muskie. Are there any other issues?

2 Mr. Billings. Mr. Chairman, there is one additional point of
3 clarification that staff would like. The subcommittee recommend-
4 ed that industrial users should repay that portion of the
5 Federal grant treating their waste.

6 The issue that is not decided in the print is whether the
7 repayment from industrial users should be principal plus interest
8 or principal only. That portion of the Federal grant attributab-
9 le to treatment of industrial wastes, the administration recom-
10 mends principal only.

11 Mr. Jorling. When I asked what the language meant in their
12 own bill, they responded that they intended it to cover principal
13 only.

14 The Chairman. Jim?

15 Senator Buckley. I would like to say that the output I got
16 from New York was that placing this extra burden on industry
17 is going to cost, to make much of industry to decide not to
18 participate in municipal funding. The industries have paid for
19 their share through taxation as consumers have.

20 I am talking about the fundamental issue of adding to the
21 industrial user charge by a repayment of an extra share of the
22 cost on the basis that some state authorities feel this would
23 make it twice as difficult for them to induce industries to
24 participate, to cooperate with municipal disposal.

25 Senator Muskie. It seems to me that that was discussed in

1 subcommittee. If you were to over participation to industry in
2 waste treatment plants at no cost to them, at all, we are just
3 going to have to raise our whole sights about the total Federal
4 authorization.

5 This would mean that to the extent that it is technically
6 feasible, we would be assuming the burden, that is the public
7 treasury, of financing the total cost for this waste treatment.
8 I think it is more than we can sell.

9 The question of interest is another one I have focused on,
10 how much this might cost and so on. I have no objection to that.
11 But taking the total cost makes it more than we can ask the
12 public treasury to bear.

13 Senator Tunney. May I ask a question?

14 The Chairman. Yes, John.

15 Senator Tunney. Is it the position of the committee that it
16 is desirable to have industry participate in municipal treatment
17 plants? If so, then, it would seem to me, that by giving them
18 a break on interest it would be an incentive to have them
19 participate in treatment plants rather than going ahead with
20 their own treatment plants.

21 If it is the position of the committee that we want industry
22 to build their own treatment plants, then I think that you would
23 want to have a disincentive to have them participate in municipal
24 treatment plants.

25 So therefore we would want to have interest rates charged.

1 So I think it depends on what the basic approach is, the basic
2 philosophy is.

3 I am willing to go ahead with either one, not knowing whether
4 we want them to participate in municipal treatment plants or do
5 not want them to participate.

6 The Chairman. I think at certain times at certain plants
7 there could be participation. I would personally favor the
8 waiving of interest. We would then be saying, "If you can work
9 with the municipalities, OK. But there is not enough there to
10 make you forego your own company obligations."

11 Senator Muskie. I think the background of this, to give the
12 staff and my point of view, this whole thing developed out of
13 the question as to whether or not tax credits ought to be used
14 as an incentive as an assist to industries to move forward in
15 this area.

16 This committee has always been on record, I believe, for
17 tax credit. But as a practical matter we learned that you couldn't
18 get away with this because you couldn't get by the Ways and Means
19 Committee or the Finance Committee in the Senate with that kind
20 of proposal.

21 Industry, to the extent that we discussed it with industry,
22 indicated -- small industry particularly -- that the problem of
23 raising the money for these non-productive aspects is a problem.
24 There is a way for the Federal Government initially to provide
25 the money by putting it up. This would be an incentive, an

1 important incentive.

2 Secondly, with respect to small industries, particularly,
3 I don't know if it is feasible to consider taking care of a
4 community's entire waste problem in a single plan. It made
5 sense in the waste treatment point of view to have the same
6 financing mechanism handle the public and industrial sector.

7 I don't think you can reach the conclusion generally that it
8 would be good to have all waste treatment facilities combined in
9 this way. I would have my doubts. But I couldn't prove the case
10 one way or the other.

11 What we wanted to put together was an option for industry
12 with at least the incentive for providing the capital and giving
13 industry an opportunity to write-on its costs on an annual basis.
14 To the extent that that was useful to a community or to industry,
15 we wanted to make it available.

16 We are willing to make incentives to, you know, push all
17 industry in this direction.

18 Senator Buckley. I had the impression this was considered a
19 very desirable thing, to have industry feeding into the same
20 system.

21 Senator Muskie. In some cases.

22 Senator Buckley. During the recess, did the staff get
23 information other than from New York in this area?

24 Mr. Billings. No, by and large, interestingly enough,
25 industry's major desire is to have the opportunity to get into

1 municipal systems where it is compatible because of the fact that
2 they appreciate the economy argument. They also appreciate
3 knowing that they don't have to acquire these maintenance opera-
4 tion personnel and have them on their payroll and so on.

5 Additionally, it eliminates to a very great degree the need
6 to go through a rather complicated permit problem.

7 One other point, Mr. Chairman, I was surprised yesterday
8 that Senator Proxmire will be putting in his effluent tax bill,
9 probably as an amendment to one of the bills pending before this
10 committee, with the strong indication that it will be offered as
11 an amendment on the floor.

12 It seems in that event it would be in the Committee's
13 interest to have a counter that the industrys having paid the
14 cost of waste treatment are going to have a comparable incentive
15 for waste reduction than if they paid an effluent tax and just
16 as reasonably as assessing their costs as to try to have an
17 administratively fixed fee for the discharge of their waste.

18 Senator Gravel. Also find a cheaper rate of interest than
19 they would have to pay by themselves in the marketplace. They
20 would have an advantage right there. I philosophically would be
21 opposed to giving them additional. They should bear the same
22 burden as the citizen pays back.

23 Senator Buckley. The citizen is not paying back the cost.
24 This is unilateral, a charge unilaterally imposed upon industry.

25 Mr. Billings. In terms of the Federal grant.

1 Senator Gravel. I still like it.

2 Senator Muskie. I think this would endanger the bill on the
3 floor. What we have been trying to do is put together as strong
4 a bill as we could on this issue so that we have something to
5 counter the Proxmire amendment. There is great deal of sentiment
6 in this country for the idea of imposing a tax on industry for
7 the privilege of polluting the streams. You know, that is a
8 very simplistic approach which is very difficult to counter.

9 So I would hate to see us put ourselves in the position of
10 offering a principal subsidy to industry when they really haven't
11 been pressing us for it. There has been the complaint that there
12 was inadequate Federal funding. It was impossible to fund these
13 giant plants.

14 So I see no reason at this point for that additional
15 incentive. It would pose problems on the floor, in my judgment.

16 Senator Buckley. I would like to see the waiver of interest.
17 We are having industry put out 10 billion dollars over a period
18 of time. I understand from EPA statistics that industry will
19 account for half the load, actually. Now, do we specify the
20 period of time over which a plant is to be amortized for charges?

21 Mr. Billings. The legislation does not address itself to
22 that, Senator Buckley. However, the report will indicate, unless
23 we are advised to the contrary, that we expect amortization will
24 take over depreciation so that industry in essence would be
25 paying its cost on the same basis that it would hire a plant.

1 The Chairman. I am ready to vote. I am in favor of waiving
2 the interest.

3 Senator Cooper. I agree.

4 The Chairman. Do you want a roll call on this, Senator
5 Buckley?

6 Senator Buckley. If you wish.

7 The Chairman. You have offered the amendment. Is there a
8 formal amendment before us?

9 Senator Buckley. I would move the waiver of interest.

10 The Chairman. Is there a second?

11 Senator Cooper. I second.

12 The Chairman. Senator Cooper seconds. All those who would
13 favor the Buckley proposal, will you raise your right hands?

14 Senator Cooper. I have Senator Stafford's proxy.

15 The Chairman. Now, those opposed? Well, then the Buckley
16 amendment will be approved.

17 Senator Muskie. We have two proxys on this side.

18 The Chairman. I suspect we ought to have a roll call.

19 Senator Muskie. I suspect so.

20 The Chairman. If we have the proxys. Because we are operating
21 now with ---

22 Mr. Billings. Let us put the question again, Mr. Chairman,
23 please.

24 The Chairman. The question is that there be a waiver of
25 interest, not a waiver of the principal. That was moved by

1 Senator Buckley and seconded by Senator Cooper. Would you call
2 the roll, please?

3 Mr. Huyett. Senator Baker? Senator Bayh? Senator Stafford?
4 Senator Cooper. Aye.

5 Mr. Huyett. Senator Bentsen? Senator Boggs.
6 Senator Muskie. No.

7 Mr. Huyett. "No" on Bentsen. Senator Boggs?
8 Senator Boggs. Aye.

9 Mr. Huyett. Senator Buckley?
10 Senator Buckley. Aye.

11 Mr. Huyett. Senator Cooper?
12 Senator Cooper. Aye.

13 Mr. Huyett. Senator Dole? Senator Eagleton?
14 Senator Eagleton. No.

15 Mr. Huyett. Senator Gravel?
16 Senator Gravel. No.

17 Mr. Huyett. Senator Jordan? Senator Montoya? Senator
18 Randolph?

19 The Chairman. Aye.

20 Mr. Huyett. Senator Tunney?
21 Senator Tunney. No.

22 Mr. Huyett. Senator Weicker? Senator Muskie?
23 Senator Muskie. No.

24 Senator Cooper. Under the rules, I don't have the proxy on
25 this specific issue. I have Senator Stafford's.

1 Senator Muskie. Did you get Eagleton and Bentsen?

2 Mr. Huyett. Yes, sir.

3 Senator Muskie. You have only got four "no's" there. There
4 should be five.

5 Mr. Huyett. Senator Bentsen. The "no's" were Senator
6 Bentsen, Senator Eagleton, Senator Gravel and Senator Tunney.
7 The motion to waive the interest on the industry share carried
8 by a vote of 6 to 5.

9 The Chairman. All right, what is our next subject?

10 Senator Boggs. Mr. Chairman, if I may, I have a little
11 point. It won't take but a minute. It is on Section 203,
12 page 25 of the draft of the bill. My state, Delaware, has an
13 objection to the language of 203 presently in the bill. It
14 could require submission of full engineering drawings and so
15 forth before any sewage treatment system receives any EPA
16 consideration.

17 Delaware feels that is a particular proposal is rejected by
18 EPA after all that, the result would be a long delay and a
19 significant waste of funds.

20 Delaware wants to require that the administrator must review
21 a project's preliminary plans and give preliminary approval.
22 This would be accomplished by the language on the top right of
23 page 25 and was suggested by the administration, as I understand
24 it.

25 This would provide that EPA should consider a preliminary

1 engineering feasibility study. Then if they approve it, advance
2 5 per cent from the estimated construction cost of the project
3 to help pay for the engineering design.

4 Once these engineering designs are completed, EPA would then
5 consider the whole project for approval and a Federal commitment
6 for the rest of the funds of the project.

7 It seems that this would encourage faster movement. Other-
8 wise they would be putting so much money in an engineering
9 design and plans so that they people in authority would be
10 cautious and hold up.

11 I don't know. But I submit it because I ---

12 Senator Muskie. I think that makes sense. That makes sense.

13 Senator Tunney. Would it require any amendment of the
14 language on page 25?

15 Senator Boggs. It would require the language on the right-
16 hand side of the bill. Do you see that?

17 Senator Tunney. But it doesn't say "preliminary."

18 Senator Boggs. I think this language would cover it.
19 I would ask the staff to make sure of it.

20 Senator Tunney. Fine.

21 Senator Boggs. I am glad you raised the point.

22 The Chairman. Mr. Huyett would like, if there is no objection.
23 to have a recapitulation. He feels that perhaps he made an
24 error.

25 Mr. Huyett. Let me call the roll.

1 The Chairman. Before we do that, can we approve the
2 suggestion of Senator Boggs? We will do that, then. All in
3 favor say "aye."

4 Voices. Aye.

5 The Chairman. I always like to have our members fully
6 advised. I am not one to rush something.

7 Senator Boggs. If it is a matter that you would like to
8 go over at 2:00 this afternoon?

9 Senator Muskie. I think that would be good. I have a
10 general proxy. But not a specific one on this.

11 The Chairman. If there is no objection, we will just hold
12 over until this afternoon. Is that agreeable with you?

13 Senator Buckley. Certainly.

14 Senator Tunney. What is the agenda for this afternoon, Mr.
15 Chairman?

16 The Chairman. We are just going to continue. Of course ---

17 Senator Tunney. Have we finished this agenda yet?

18 The Chairman. I don't think so.

19 Mr. Billings. There are some items left to go.

20 Senator Muskie. We have Senator Eagleton's amendment.

21 Senator Gravel. Will we be in S-126?

22 The Chairman. Yes, S-126 at 2:00.

23 (Whereupon, at 12:22 p.m., the business meeting adjourned, to
24 reconvene in room S-126 at 2:00 p.m. the same day.)

25 - - -

cc-1

AFTER RECESS

1
2 Senator Randolph. Before we go into consideration of
3 language amendments, our interest in discussion of specifics,
4 we have Senator Stafford who wishes to bring a matter to our
5 attention which concerns his own state.

6 I think it is a matter that we can have staff develop,
7 but at least I would like for us to hear it at this time.

8 Senator?

9 Senator Stafford. Thank you very much, Mr. Chairman.
10 The state of Vermont, as well as several other states, would
11 have an interest in having a provision for pre-financing in
12 this legislation.

13 My impression is that there is none in the bill as it
14 now exists before the Committee. The value of the pre-financing
15 provision which has existed in the past is that it would permit
16 a steady state construction program by eliminating the peaks and
17 the lows resulting from a lack of reliable cash flow.

18 That is the reason that Vermont would like to have the
19 pre-financing provision in the bill. I would appreciate it if
20 the staff could study this while we are in the process of work-
21 ing up the final form of the bill.

22 Senator Randolph. Tom, will you make a response if
23 you can at this time?

24 Mr. Jorling. Yes, Mr. Chairman. The pre-financing
25 problem has been one that has plagued the construction of

cc-2 1 facilities beginning in 1956 and continuing on at least through
2 the existing program. It is one of the elements that prompted
3 the Sub-committee to adopt the contract authority method of
4 obligating the Federal government to pay, rather than paying
5 depending on appropriations, which up until this year have been
6 well beyond the authorization level.

7 The second element has been to consider the rate at
8 which re-allocation was made available to states which had
9 greater needs and would become eligible to receive money from
10 those states which had no needs or which returned money to the
11 Federal government.

12 Both those elements are in the Sub-committee bill.
13 As Senator Stafford has pointed out, Vermont -- and I know two
14 other states -- still feels that the Sub-committee provision
15 does not adequately enable them to proceed on the pace that they
16 have set for themselves and get their construction started and
17 completed, because they have a higher level of project construc-
18 tion scheduled for the next two years than would become avail-
19 able in the state of Vermont and the state of Massachusetts, for
20 example.

21 They would like to see a pre-financing provision re-
22 incorporated into the bill. I think what we will have to do is
23 check to see that in fact there is a problem with pre-financing
24 in any state under the Sub-committee bill and make an appropriate
25 accommodation.

cc-3

1 Senator Randolph. Senator, I think that we can accom-
2 plish then, if it is necessary, language as Tom has explained
3 pertaining to you and a couple -f other states.

4 Senator Stafford. Thank you, Mr. Chairman.

5 Mr. Jorling. Mr. Chairman, I received a call from
6 Leon. He said Senator Muskie would be up directly. He sug-
7 gested that we pass out some staff language on two items that
8 might be read while we are waiting.

9 The staff has generated the direction of the Sub-com-
10 mittee in effect. One is a definition of toxic pollutants. It
11 is the shorter of the two papers. The definition that is in the
12 print has generated considerable stir both in the Administration
13 and in many outside groups.

14 We were directed to develop a definition that was more
15 acceptable to everyone concerned. The definition which is now
16 before you has been concurred in by the Administration and by
17 as many people as we have been able to talk to to date.

18 The problem that really arises in the toxic definition
19 is avoiding or giving some direction to the Administrator's dis-
20 cretion. The Sub-committee print involved no discretion. It
21 was a cut-off of 1500 parts per million in any material to be-
22 come labelled as toxic. The Administrator then pursued the
23 rule-making process accordingly.

24 This gives direction to the Administrator while not
25 giving an objective cut-off point in the definition. It also

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1 was very much the concern of an earlier full Committee session
2 on how to handle to problem of viruses.

3 In consultation with the Public Health Service, the
4 Surgeon General, and the EPA, the language "viruses" had been
5 deleted and "disease causing agents" has been substituted to
6 avoid the complexities that were created by the earlier Sub-
7 committee language.

8 The other provision that has been distributed ---

9 Senator Randolph. Let us talk to this one for a
10 moment. I am certain I am very stupid, but what is the meaning
11 of the word "Sub-lethal"?

12 Mr. Jorling "Sub-lethal" is an adverse effect which,
13 while not causing death, still produces an effect that would
14 be considered severe enough to require hospitalization or
15 other prompt medical attention, so that, I think ---

16 Senator Randolph. It is not a good word to me. That
17 is the only reason I mentioned it.

18 Senator Boggs. Let us leave it out.

19 Mr. Jorling. I think "other adverse effects" is a
20 better terminology.

21 Senator Randolph. I would prefer that, if there is
22 no objection.

23 Senator Cooper. Death is pretty adverse.

24 Senator Randolph. Is there any question or comment?

25 Senator Cooper. Does the Administrator have to pub-

cc-5

1 lish a list of these toxic pollutants?

2 Mr. Jorling. Yes. What this does is relate to Sec-
3 tion 307 which requires the Administrator to publish a list of
4 anything he considers toxic and that is a rule-making proceed-
5 ing.

6 After he publishes the list, he initiates a proposed
7 effluent standard for the substance which could include a pro-
8 hibition, as in the Air Act. Following that is a full public
9 hearing on the record, determination, and then a final promul-
10 gation of the rule.

11 The definition of toxic substance, in effect, becomes
12 part of the background against which the Administrator is held
13 in the rule-making proceeding.

14 Senator Cooper. There is a question of imposing stan-
15 dards.

16 Mr. Jorling. I believe so. That is the intention:
17 To relieve a little bit more of the onus on the Administrator
18 that otherwise prevails at a rule-making proceeding to give him
19 a little more discretion in the case of toxic substances than
20 is the standard rule-making for other kinds of pollutants.

21 I think it relieves the Administrator of some of the
22 burden of proof question by shifting them to those people who
23 are dealing in this kind of pollutant.

24 Senator Cooper. He would have to publish a list of
25 toxic pollutants.

cc-6

1 Mr. Jorling. Yes, he does. Before he can begin the
2 rule-making proceeding under Section 307(a), he must publish a
3 list which includes each toxic pollutant for which he intends
4 to promulgate an effluent standard under this proceeding.

5 Senator Cooper. My question goes back to definition,
6 a definition that would have enough specificity to it that it
7 could be enforced.

8 Mr. Jorling. I think what would be enforced would be
9 the specific effluent standard that was imposed on the particu-
10 lar pollutant, rather than whether or not the pollutant was in
11 fact toxic.

12 I think he would be able to have a clear enforcement
13 authority that would not be complicated by the language of the
14 definition. The standard would be the enforcing item.

15 I think where the definition would become more impor-
16 tant is in any judicial review of any effluent standard on the
17 grounds that the pollutant was not in fact toxic and, therefore,
18 the standard was not supported by the statute.

19 Senator Randolph. Again, Tom, I have a little trouble
20 with an expression here. That is "into any organism". Maybe I
21 am in error, but it seems to me at least to be so broad as to be
22 meaningless.

23 I am trying just to have you give me information.

24 Mr. Jorling. What this is directed at is the DDT
25 kind of question where the DDT is assimilated into low

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1 organisms in the food chain. Those are then incorporated up the
2 food chain to become -- to produce toxic effects. Mercury is
3 another case where it is not directly ingested into man where
4 the toxic effect is produced, but rather through the assimila-
5 tion of mercury into, say, swordfish in toxic levels.

6 The way most of these heavy metal toxic pollutant
7 problems occur is through this pattern: Through increasing
8 concentrations up the food chain. Therefore, the detection
9 of this toxicity is into any organism, rather than into man.

10 That is basically the purpose of providing this state-
11 ment.

12 Senator Cooper. If the pollutant is ingested into
13 man or passed through an organism, that could cause these ef-
14 fects.

15 Mr. Jorling. These effects. Yes, and also on any
16 plankton, shellfish, wildlife, on any fish or fireflies, as Mr.
17 Guard has said.

18 If a substance discharged into receiving water -- If
19 it produced these kinds of effects in any organisms, it can be
20 considered a toxic pollutant.

21 If mercury does cause an adverse effect, cancer, in
22 an organism other than man, it can be classified as toxic and
23 subject to this form of rule-making.

24 Senator Randolph. I have no comments just at the
25 moment. Is there reason to discuss this further? Senator

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1 Cooper?

2 Senator Cooper. Did EPA submit a definition?

3 Mr. Jorling. They had submitted a definition very
4 similar to this. We worked over that along with the Manu-
5 facturing Chemists' Association definition with the House staff,
6 and worked out this as acceptable to all parties.

7 This is satisfactory to EPA.

8 Senator Cooper. This is toward not only human life,
9 but toward any form of life, even though the effect upon a form
10 of life might not reach human life?

11 Mr. Jorling. Yes.

12 Senator Cooper. That is pretty broad.

13 Mr. Jorling. I think the purpose is that most of
14 these effects identifiable at other levels of the biological
15 system other than man can be identified and the control should
16 be applied as soon as those -- identification of those effects,
17 rather than waiting for the effect to be revealed in man.

18 It is more of a preventive kind of definition than one
19 that waits until direct adverse effect upon man is produced be-
20 fore control is applied.

21 What we originally had in one of the earlier Sub-com-
22 mittee bills was a listing of the heavy metals plus some other
23 materials that had been identified as toxic. The reaction to
24 that was that the specificity in the statute was not appropriate
25 and that the Administrator should have a little more discretion

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1 in determining which substances should be subject to this form
2 of regulation.

3 Then the question came in: "If you don't list the
4 substances, how do you define them so that the Administrator is
5 directed to act on the appropriate substances?" Most of the
6 which
7 substances/would be subject to this form of regulation would be
8 heavy metals, carbonated hydro-carbons, and certain other very
9 toxic chemical compounds.

10 Most of the effects of these materials are revealed
11 on organisms other than man in the first instance.

12 Senator Cooper. "Adverse effects", as used there, is
13 broader than the naming of certain characteristics.

14 Mr. Jorling. Yes.

15 Senator Cooper. It would be a definite position if
16 you say "cause death or disease" and strike "adverse effects".

17 Senator Randolph. John, by cutting "sublethal" and
18 letting it go we are giving the Administrator too much discre-
19 tion?

20 Senator Cooper. Well, it just seems if these do cause
21 death, disease, behavioral abnormalities, cancer, genetic mu-
22 tations, and so forth, that is it. That takes care of them.
23 It seems to me that "other adverse effects" is too undefined.

24 Mr. Jorling. My reaction is that that would not de-
25 tract from the value of the definition and would limit the pos-
sible abuses the Administrator could have. In effect, it would

cc-10 1 not be one of these and not severe.

2 I don't think you would lose anything by deleting it.

3 Senator Cooper. I think we ought to.

4 Mr. Jorling. I think that is appropriate. After the
5 word "death", strike the clause beginning "or" down through the
6 word "to" in the next line, so it would read: "available to
7 the Administrator, cause death, disease, behavioral abnormali-
8 ties, cancer, genetic mutations, physiological malfunctions."

9 Senator Randolph. That would certainly be agreeable
10 to me. Can we then tentatively approve this language? Let us
11 do that then. Without objection, it is tentatively approved.

12 Now, you had another matter.

13 Mr. Jorling. I don't know. Leon, do you want to
14 pick this back up? We have gone through the toxic. Do you
15 want to go back to Title II?

16 Mr. Billings. The ---

17 Senator Randolph. Now, let us return to the vote that
18 we had this morning and agreed to come back to this afternoon.
19 I am not sure that there was any error and I believe Mr. Huyett
20 is not certain, but we always want a very clear understanding of
21 what happens.

22 We can let this vote that we had this morning stand or
23 I am very, very glad to re-open and have another vote. That is
24 the position which I, as the Chairman, would want to be under-
25 stood.

cc-11

1 Senator Muskie. I suggest the best way to resolve it
2 is, rather than try to take another vote now, just to ask the
3 staff to inquire among the members whether or not they want to
4 be recorded on that issue. It is a rather central one.

5 Senator Randolph. We had nine members, didn't we?
6 We had a quorum?

7 Mr. Huyett. Yes. We had a quorum. It was 6 to 5
8 with two proxies.

9 Senator Randolph. But we actually had nine persons
10 present?

11 Mr. Huyett. Yes, sir. What I really wanted to do was
12 just merely to read this back and be sure that I had properly
13 recorded. I was not sure about the proxy that Senator Muskie
14 voted for Senator Bentsen.

15 First I understood him to say that he voted Senator
16 Bentsen's proxy against, and then he said something later that
17 I wasn't sure whether I had heard it correctly the first time.
18 I don't know whether he was really voting the proxy.

19 Senator Muskie. I had a general proxy and I voted the
20 proxy, but you often vote a general proxy on an issue that was
21 not necessarily anticipated at the time the proxy was granted.
22 That was the case here.

23 I did not anticipate that issue. I don't know about
24 the other proxy, whether that also was the same situation.

25 I didn't question the vote, but when you opened up the

1 question as to whether or not every Senator's view had been
2 accurately reflected in the vote, why I just suggested maybe
3 we could check with the Senators, especially those who were
4 represented by proxies to see whether they wanted to have
5 their votes recorded as such.

6 I am always reluctant to vote general proxies on
7 issues that were not anticipated.

8 Senator Randolph. Well ---

9 Senator Muskie. But that would not change the result
10 in my case.

11 Senator Randolph. Well ---

12 Mr. Huyett. Could I just verify the vote by reading
13 them off? It could be verified that this is the way that every-
14 one understands the votes were given and it would stand.

15 Senator Randolph. It won't hurt to do that.

16 Mr. Huyett. I will read off the names and how the
17 vote was given: Senator Boggs, aye; Senator Buckley, aye;
18 Senator Cooper, aye; Senator Montoya, aye; Senator Stafford,
19 aye; Senator Randolph, aye; Senator Bentsen, no; Senator
20 Eagleton, no; Senator Gravel, no; Senator Muskie, no; Senator
21 Tunney, no.

22 Mr. Katz. Mr. Chairman, I didn't have a chance to
23 check with Senator Bentsen. It was an unanticipated vote and
24 I would prefer that he not be recorded on it as a general proxy,
25 because I actually do not know how he would vote on that

cc-13 1 particular question.

2 Senator Muskie. I understand Senator Bayh would like
3 to be recorded in the negative. Neither of those would change
4 the result, so I make no issue of it.

5 Senator Randolph. Of course, your Chairman wants to
6 accommodate the fullest understanding of this and other votes.
7 If there is a desire on the part of any member to, by unanimous
8 consent, have a further vote taken, I would be delighted to go
9 along with it.

10 Senator Muskie. May I suggest, Mr. Chairman, that it
11 has been our practice to leave every issue that has been voted
12 on open for the consideration of any Senator. That practice
13 still holds and I assume that there have been enough staff
14 members present for absent Senators that they know this issue
15 has been raised, so that if any of them want to raise it again
16 subsequently they are free to do so.

17 I see no reason to probe further into this morning's
18 vote. It is there and anybody can grab it again if they want
19 to.

20 Senator Randolph. That is agreeable to me. Is it
21 agreeable to all?

22 Senator Muskie. I would take Senator Bentsen off,
23 because we have got specific word from him. Senator Bayh has
24 indicated his views. We will wait. That can be taken care of.

25 Senator Randolph. All right. Now, Senator Muskie,

cc-14

1 in your absnece we were considering that toxic pollutant and I
2 understand the definition is now, am I correct, agreeable?

3 Senator Muskie. Yes.

4 Senator Randolph. I think it was agreeable here. Tom
5 had just started to speak about the other matter that we had,
6 the Administrator development of criteria. I don't know, Leon,
7 whether you want to proceed or if Senator Muskie wants to.

8 Mr. Billings. Mr. Chairman, Section 304(a) is sub-
9 stantially the language that the Sub-committee approved on
10 water quality criteria and is only reprinted here for the pur-
11 pose of consistency of the Section.

12 The language in this Section which is relevant to the
13 over-all consideration of legislation appears starting at 304
14 (b) which is the guidelines which the Administrator will issue
15 to the states for the purpose of establishing effluent limita-
16 tions, as either a part of a permanent program or as part of an
17 effluent regulatory program.

18 These guidelines would be necessary, regardless of
19 what approach the legislation finally takes. The operative
20 languages are Paragraphs A through E on page 2 and the top of
21 page 3.

22 Senator Boggs. Might I ask a question on that?

23 Senator Randolph. Yes, sir.

24 Senator Boggs. On page 2 under A: "identify the
25 control measures necessary to achieve the equivalent of

cc-15 1 secondary treatment". Are we clear in our minds? Is secondary
2 treatment a technical term?

3 Mr. Billings. Senator Boggs, in virtually all cases,
4 the water quality standards that have been presently approved
5 require secondary treatment or its equivalent for industry.
6 Therefore, we are trying to retain that level of control as a
7 consistent carry-over in this legislation.

8 Senator Boggs. Right.

9 Mr. Billings. By the way, that word should be "con
10 trol measures available to achieve" instead of "necessary".

11 Senator Boggs. Well, if you go down to C, how does
12 this relate to the new source standard section? "Identify the
13 best control measures available including treatment techniques,
14 process and procedure innovations"?

15 Mr. Billings. Paragraph C would not relate to new
16 source standards. The information on the capability to imple-
17 ment new source performance standards is in Sub-section (c) on
18 page 3.

19 This is the identification of the top technology for
20 application to existing plant essentially.

21 Senator Boggs. I see. The provision -- How would it
22 relate, if it does, to the provision that EPA set only efflu-
23 ent levels, not process changes?

24 Mr. Billings. Insofar as your report language, I had
25 understood that that was to modify the new source performance

cc-16 1 standards and it would relate again to small "c" on page 3.

2 Senator Boggs. And does this language in "c", "d",
3 and "e" -- How does it relate to the best practical technology
4 that is generally available?

5 Mr. Billings. This would in essence be identifying
6 that level.

7 Senator Boggs. Very good.

8 Mr. Billings. The attempt has been to try to find
9 some words which describe two levels of capability: that
10 which is currently available and that which is best available.

11 Senator Boggs. Best practical.

12 Mr. Billings. That is right. Using some terminology
13 which the Administration and the staff could agree upon. As to
14 the precision of the terminology, we have given this language
15 to the Administration and asked them to work on it to make sure
16 that there is not any confusion as to what the bill means and
17 what they would expect it to mean.

18 Senator Boggs. Very good. Thank you. Thank you,
19 Mr. Chairman.

20 Senator Randolph. Leon, is the language we have been
21 given the basic language of the Sub-committee?

22 Mr. Billings. Mr. Chairman, the language in sub-sec-
23 tion (a) is the basic language of the Sub-committee bill. The
24 language which appears on page 4, sub-section (e) is the basic
25 language of the Sub-committee bill.

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1 The language of sub-section (b), all of page two and
2 the top of page 3, is new language. It is new language to try
3 to provide some guidance as to what -- in determining what
4 effluent limitations are in terms of the requirements of the
5 law to establish effluent limitations.

6 Senator Randolph. Ed, this language to me insofar as
7 I can see is satisfactory, as I have read it. I just want to
8 indicate that.

9 Mr. Billings. Of course, before we are through, we
10 will have the Administration's specific reaction to the termino-
11 logy and we will also turn this over to legislative counsel for
12 technical opinions.

13 Mr. Cathcart. Leon, could we just clarify? This is
14 language whose basic outline, have you said, has been worked out
15 with the Administration?

16 Mr. Billings. It has not been worked out with the
17 Administration, but some of the provisions are part of recom-
18 mended language that the Administration provided us on defini-
19 tion of effluent limitation.

20 Since they have given us that language, we have con-
21 structed this language and we have turned it back over to them
22 to comment. We have not sat down across the table and bargained
23 it out.

24 We expect to have a reaction back from them tomorrow
25 morning on any problems that they see with this language in

cc-18 1 terms of the strategy that we are setting forth in the bill.

2 Senator Buckley. Mr. Chairman, I was reading this
3 section of the bill during the recess. A number of people seem
4 to express an opinion that so little is known yet about non-
5 point sources and, thereby, controlling them.

6 There was a suggestion which I was about to submit
7 which would mean that the EPA would provide the states with
8 information that the states can track down, so that first ini-
9 tial period under the bill would be a fact-gathering nation-
10 wide of the information affecting tremendous problems, and
11 then have the mechanism for the EPA to put it all together
12 and then come up in mid-day with recommendations.

13 I would like to examine this language in the light of
14 that and discuss it tomorrow.

15 Senator Randolph. You are asking then that nothing
16 be done, in effect, this afternoon if we wish to discuss it
17 more? You would like to have it subject to discussion tomor-
18 row, after you have made certain checks and studies yourself?

19 Senator Buckley. Right.

20 Senator Randolph. Is there desire to discuss this
21 language further or delay its discussion until tomorrow?

22 Senator Buckley. This affects on that portion.

23 Mr. Billings. Which appears on page 4.

24 Senator Buckley. Yes.

25 Senator Muskie. I think probably delay is necessary

cc-19

1 anyway, Mr. Chairman, until we resolve the question of the
2 national water quality standard as against national effluent
3 standard.

4 We could not nail this down anyway.

5 Senator Randolph. All right then. If we are in agree-
6 ment, we will pass over it until tomorrow.

7 Senator Buckley. I hadn't realized we were passing by
8 Title II. I have two suggestions I would like to discuss that
9 have to do with more or less other matters.

10 Senator Randolph. Let us turn back then to Title II.

11 Senator Buckley. There appears to be a gap which has
12 been created by the extension of the existing legislation which
13 has failed to extend the period within which the programs can be
14 approved. The July 1, 1971, deadline is still there.

15 I understand that this is causing a delay in process-
16 ing of applications for new treatment plants. Would there be
17 any merit in providing in the next extension for the extension
18 of that language on page 10 of the bill?

19 The existing language provides that payments shall be
20 available for payments in re-inbursement of states for the local
21 funds used prior to July 1, 1971.

22 Now, as I understand it, there is some question as to
23 whether or not the extension that was approved by the Senate has
24 the effect of extending the July 1, 1971, deadline or not.

25 If it does, then we need to change the language on

cc-20

page 40.

Mr. Billings. Senator Buckley, no, the extension did not apply to that deadline because the staff had assumed in drafting the extension that the re-imbursement feature was based on the theory that appropriations would fall short of authorizations.

In 1966, when the re-imbursement provision was included in the bill, there was a general assumption that the Congress would not appropriate the money as fast as this Committee had voted to authorize.

This year the authorization as proposed in this legislation and as proposed in the extension is the same as the appropriation of \$2 billion.

In subsequent years, the appropriation -- the authorization for appropriation will be contract authority, so the total amount of authorized funds will be available at the beginning of each year without any short-fall between appropriation and authorization.

Therefore, if re-imbursement was allowed, it would mean that the Administration could commit funds in excess of the authorization of the Congress.

If the Committee were to do that, it would be, in essence, permitting spending without authority, so, as far as the staff is concerned, there are only two solutions.

One is to drop re-imbursement or, two, expand --

cc-21 1 There are three. One is drop reimbursement. Two is expand the
2 authorization to make sure that all states get all the money
3 they need. Three is to change the formula on which allocations
4 are made.

5 Mr. Jorling. Before you came, Senator Stafford raised
6 the question that has been raised by the state of Vermont and
7 also the state of Massachusetts that, under the Sub-committee
8 bill, it would require delay in their programs because, under
9 the allocation of \$2 billion in fiscal 1972 and under an allo-
10 cation of \$3 billion in 1973, they still would not get the
11 amount of money they need to go forward with what they have
12 already scheduled, so that they would like a reimbursement
13 provision.

14 Mr. Billings. The problem, Tom, is that if the
15 \$12 billion figure that the Administration sent up is correct
16 and the Sub-committee authorization of \$9 billion which is
17 approximately 75 percent, even though it is 70 percent today --
18 If those figures are accurate, then those states will be eli-
19 gible for obligations of the re-allocated funds at the end of
20 the year and there should not be any short-fall.

21 If the figures are not accurate and if there is an
22 actual greater demand for funds than proposed, then there will
23 be a short-fall and in that case the only solution is to increase
24 the authorization.

25 Mr. Jorling. The Chairman asked us to check with the

cc-22

1 EPA to find out what the facts are in connection with those two
2 states, so that we might make the appropriate ---

3 Mr. Billings. It is also true in the case of New York
4 Connecticut, and Wisconsin, and a number of other states which
5 have programs that are coming up short.

6 Senator Buckley. My other point, Mr. Chairman, had to
7 do with Sub-paragraph B on page 30. There is authorized to be
8 appropriated \$1 billion 500 million to carry out the provisions
9 of the sub-section.

10 Number one, do we know that figure is adequate to
11 cover it?

12 Mr. Billings. At this point in time, I think that
13 figure should be something like \$1.7 billion. We have got new
14 figures. We just put that in to have a number.

15 Senator Buckley. The other point of concern is that
16 we might authorize -- Perhaps there wouldn't be appropriation
17 for reimbursement, just appropriation for going forward. Hence
18 the suggestion that we tie down this matter by inserting lan-
19 guage to the effect that no less than 25 percent of the total
20 of sums appropriated under this section, Section 207, shall be
21 allocated to reimbursement until full reimbursement to all eli-
22 gible projects is accomplished.

23 Senator Muskie. I guess the only way to take care of
24 it completely is to deal with the reimbursement money in the
25 same way that we deal with the -- In other words, put it under

cc-23 1 the contract authority.

2 Senator Buckley. Retroactive effect? If that can be
3 done, it would be terrific. I know that some states have been
4 worried about going forward on the assumption that they will get
5 the money back.

6 If there isn't an early recovery of the reimburseable,
7 they are going to have to come to a halt.

8 Senator Muskie. How can that be done on contract
9 authority? Contract authority implies a mutual obligation. If
10 all it is is reimbursement, the states are not contracted to do
11 a thing. They have already billed.

12 Senator Boggs. I cannot hear you.

13 Senator Muskie. How do you contract for that? The
14 question that Senator Buckley raises is on this reimbursement
15 of -- and he is concerned that if Congress does not appropriate
16 that \$1.5 billion or whatever we put in there for reimbursement
17 the states are going to be left and communities left high and
18 dry without their reimbursement money.

19 We were speculating about whether or not we could in-
20 clude that in the contract authority, but the contract authority
21 implies mutuality of obligation. There is not going to be any
22 mutuality of obligation if the only obligation is on the side
23 of the Federal government.

24 What do you contract with? What is the subject of
25 the contract?

cc-24

1 Mr. Billings. The staff is unable to figure out a way
2 to get the obligation -- past obligations of the Federal govern-
3 ment under contract authority in a meaningful sense. That is
4 why we have a separate authorization.

5 Senator Buckley. What about specifying that moneys
6 that flow to the Federal government will automatically be di-
7 vided 25-75 percent until such time as the reimbursement has
8 been achieved?

9 Senator Muskie. How is the contract authority to be
10 exercised on a project basis?

11 Mr. Billings. A contractual obligation to a new pro-
12 gram.

13 Senator Muskie. It is going to be hard to write
14 reimbursement authority into that or reimbursement payments.

15 We may have a powerful ally in the Appropriations
16 Committee if other features in this bill emerge as they are
17 now being developed.

18 Senator Buckley. Could I ask, Mr. Chairman, that the
19 staff wrestle with this one, among the other things they are
20 wrestling with, to see if there could be some way of tightening
21 it?

22 Mr. Billings. We have wrestled. We have asked the
23 Administration, but we will go back and try again. Those are
24 the only points I had.

25 Senator Muskie. I may say that I think the obligation

cc-25

1 of the Congress on that reimbursement has been so clearly estab-
2 lished in legislative history not only of legislation, but of
3 the Senate consideration of appropriations bills, that, if the
4 Appropriations Committee did try to default on it, I think we
5 could always get the Senate to go along with it anyway.

6 In appropriations bills I think that is so clearly
7 established an obligation that I do not really think we are
8 going to have any problem, but I have no objection to the staff
9 examining it.

10 Mr. Billings. Mr. Chairman?

11 Senator Randolph. Yes, sir.

12 Mr. Billings. The staff would like to identify a
13 sleeper in the bill on page 69 of the Committee print. The
14 following language appears. It involves a policy decision.

15 "After the effective date of standards of perfor-
16 mance promulgated under this section, it shall be unlawful
17 for any owner or operator of any new source subject to the
18 jurisdiction of the United States to operate such source in
19 violation of any standard of performance applicable to such
20 source."

21 Now, what that language does not make clear is that
22 this would make unlawful an American corporation building a
23 new source in a foreign country that did not meet the new
24 source performance standards that would otherwise be applicable
25 to that source if it was built in the United States.

cc-26

1 Senator Eagleton. Could you run that once again?

2 Mr. Billings. Well ----

3 Senator Muskie. What you are saying is that if,
4 under the foreign aid program, the United States builds a
5 plant in some foreign country where it couldn't care less
6 about water pollution standards, nevertheless the effect of
7 this language would be a requirement that such ---

8 Senator Eagleton. That it be as good as if we built
9 it here.

10 Mr. Billings. It is not just that, Mr. Chairman.
11 Standard Oil of New Jersey would have to do the same.

12 Senator Muskie. I put the most innocent case.

13 Mr. Jorling. There are two policy implications that
14 conflict. The first one is that we have been informed and there
15 has been a lot of rhetoric under both the air pollution statute
16 and water pollution statute that American companies are no longer
17 going to construct their manufacturing facilities in this coun-
18 try.

19 They will go to other countries to avoid the require-
20 ments placed under our control laws. This would have the effect
21 of negating that incentive, if there is one. On the other hand,
22 it does produce an economic discrimination between American
23 corporations going to, say, a foreign nation and a manufactur-
24 ing corporation of another nation, like a European nation,
25 going to that same foreign nation, which would not have to meet

cc-27 1 the new source performance standards or meet the costs which are
2 required.

3 There are two policy aspects that conflict. One would
4 be to encourage many corporations to manufacture here, at least
5 deny them the option of going abroad and not meeting these stan-
6 dards.

7 On the other hand, they would still have an economic
8 discrimination vis a vis a foreign corporation.

9 Senator Muskie. There is another problem it seems to
10 me. It would cost American companies to meet domestic standards.
11 We may get two results. One, that the American company becomes
12 non-competitive; and, two, that that competitive advantage to
13 other countries would dissuade them from moving toward a higher
14 standard of performance.

15 In other words, you build in an economic advantage to
16 continuation of pollution on their part, at the same time as you
17 make our companies -- It seems to me that that sort of thing has
18 to be approached on a multi-lateral basis.

19 What you are fighting is the whole question of: "Well
20 you are going to clean up America, but you are going to export
21 your pollution."

22 Mr. Billings. That is what this is intended to stop.

23 Senator Cooper. May I ask a question? Any operation
24 in this country, any person who is in this country, foreign or
25 anybody else, is subject to the laws of this country. Now, if

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1 we look at a plant in France or Germany or someplace, I do not
2 think you could subject Americans operating in that country to
3 the laws of this country.

4 Senator Eagleton. Could I take up on that? Suppose
5 you build a plant in Nigeria and it was stinky, a bad plant, and
6 would be illegal on the Mississippi River. Now, who would bring
7 what action against whom in what forum?

8 Say it is Standard or X Company. Would you sue them?
9 Where and for what violation in Nigeria? Let us assume it vio-
10 lates no Nigerian law, common law or statutory. Where would
11 you bring an action?

12 Senator Bentsen. I will tell you who would do the
13 suing: Some foreign competitor who was also in Nigeria compet-
14 ing with you on your plant. Now, I don't know where you would
15 bring it.

16 Senator Cooper. But we have got quite a situation
17 there of air quality.

18 Senator Eagleton. What do we do as to cars?

19 Senator Cooper. We have the same standards for export
20 automobiles.

21 Senator Eagleton. Not that we export that terribly
22 many, but do we require on a Ford that is going to be exported
23 to Britain that it be as clean as a Ford for use here in the
24 country?

25 Mr. Billings. We copped out on that.

cc-29 1 Senator Eagleton. I know incoming cars have to be as
2 clean as Fords used here, such as Toyotas.

3 Mr. Jorling. In the bill that passed the Senate,
4 there was a requirement that any vehicle built for export would
5 have to conform to the domestic standards. However, as a re-
6 sult of conference, it was revised to read as follows:

7 "A new motor vehicle or new motor vehicle engine
8 intended solely for export, so labelled or tagged on the out-
9 side of the container and on the vehicle or engine itself,
10 shall be subject to the provisions of Sub-section A --" That
11 is the domestic standard --- "except that, if the country of
12 export has emission standards that differ from the standards
13 described under Sub-section A, then such vehicle or engine
14 shall comply with the standards of such country of export."

15 Senator Eagleton. What is they have no standards?

16 Mr. Jorling. Then they would be required to comply.

17 Senator Eagleton. With no standards.

18 Mr. Billings. With ours.

19 Mr. Jorling. With the domestic requirement.

20 Senator Muskie. I guess I didn't hear that right.
21 If it is exported to Germany and Germany has no standards, then
22 the American standard must be complied with?

23 Mr. Jorling. Yes.

24 Mr. Billings. The importing country has to have
25 emission standard which differ from the American standards in

cc-30

1 order for the American standards to not apply. They would have
2 to positively act to set zero or to set no emission standards.

3 Senator Tunney. To have it apply to us?

4 Mr. Billings. To eliminate the application of our
5 standards.

6 Senator Eagleton. This is on cars. I was just try-
7 ing to see if there was any analogy to exporting American cars
8 abroad.

9 Senator Tunney. May I just ask a question, Mr. Chair-
10 man? I was wondering what the economic impact would be on Amer-
11 ican sales and equipment overseas. For instance, it is my un-
12 derstanding that most of the subsidiaries that we have overseas
13 purchase American goods for plant equipment.

14 We presently have about \$77 billion invested over-
15 seas. If, in fact I am correct -- I have heard some hearings
16 over in the House of Representatives on direct investment con-
17 trols, which indicated that most purchasers of plant equipment
18 by foreign subsidiaries of domestic American corporations are
19 purchases from the United States.

20 I am just wondering what the economic impact would be
21 on sales of plant and equipment products by American based cor-
22 porations to foreign subsidiaries, if the proposed draft lan-
23 guage became law.

24 I think it would have a dramatically adverse impact,
25 just off the top of my head.

cc-31

1 Senator Muskie. It would have ----

2 Senator Tunney. Without more information, I find it
3 very difficult to accept that language. We are talking about
4 \$77 billion worth of foreign investments.

5 Senator Bentsen. Mr. Chairman, are there any defen-
6 dres of the language?

7 Senator Muskie. Does the language that you have read
8 If we strike it, does that take care of the problem?

9 Mr. Billings. The deletion of that language would
10 create no problems to the bill as such, only the problem of
11 deleting language.

12 Senator Bentsen. Then I move the deletion of the lan-
13 guage, Mr. Chairman.

14 Mr. Jorling. Mr. Chairman, there may be an opportun-
15 ity here to influence these upcoming -- the upcoming Stockholm
16 convention on the environment, the U.N. convention.

17 One of the things they are looking at is the inter-
18 national control of pollution. It might be wise, in substitute
19 for this, to direct the Administration to endeavor to enter into
20 a multi-nation agreement to control the construction of new faci-
21 lities to a uniform standard world-wide.

22 Senator Bentsen. I think that is constructive.

23 Senator Muskie. All right. Why don't we -- I gather
24 that is the sense of the Committee, so why don't we ask the
25 staff to develop such language as a substitute for the language

cc-32 1 in here?

2 Senator Bentsen. I withdraw my motion.

3 Mr. Billings. Let us see if we have any other sleeper
4 in here.

5 Senator Muskie. How about the authorization? Have we
6 dealt with that? It is on the agenda. Should we act on it?

7 Mr. Billings. It is in the Sub-committee bill.

8 Senator Muskie. As I understand the agenda, its pur-
9 pose was to identify all those issues as to which the Adminis-
10 tration had raised questions, so that we would have before us
11 for positive consideration all those issues which the staff
12 felt ought to -- had been raised by the Administration.

13 Isn't that right?

14 Mr. Billings. That is right. Mr. Chairman, page 31
15 of the print, Sub-section B provides \$18 billion authorization
16 for fiscal years 1973 through 1976. The authorization for fis-
17 cal 1972 of \$2 billion is not in question.

18 The Administration prefers that the Committee limit
19 the authorization to \$2 billion a year for two additional years
20 beyond fiscal 1972, that is, fiscal 1973 and 1974, and that there
21 be no authorization for fiscal years beyond 1974.

22 Senator Eagleton. Then, would the Administration be
23 \$2, \$4, \$6 billion?

24 Mr. Billings. Yes, sir.

25 Senator Eagleton. \$2, \$4, and \$6 billion for 1972,

cc-33

1 1973, and 1974, as opposed to ---

2 Mr. Billings. \$2, \$2, \$2 billion, unless you are
3 doing that on a cumulative basis.

4 Senator Bagleton. They don't accumulate? It is just
5 a total of \$6 billion for three years as opposed to ours of ---

6 Mr. Billings. \$9 billion for the same three.

7 Senator Cooper. Mr. Chairman, I make this proposal.
8 I make this motion. It is not exactly the Administration pro-
9 posal, but at least it is acceptable to them: \$2 billion for
10 1972, \$3 billion for 1973, and \$4 billion for 1974, and stop
11 at that point.

12 That would be for over three years. By that time, we
13 would have a much better idea of what is necessary. I think it
14 is better to keep ourselves in that limit.

15 I don't think it will hurt the bill. I think \$9 bil-
16 lion over three years as an objective is more reachable than
17 \$20 billion over five years. It just builds up a lot of hope
18 and illusions.

19 I think on that basis the Appropriations Committee,
20 which has been very good and has followed pretty much the re-
21 commendations of Senator Muskie right along, would give us most
22 of that money.

23 At the proper time, I will move to substitute that
24 language.

25 Senator Boggs. May I add a word, Mr. Chairman, on

cc-34

1 that? I am inclined to support Senator Cooper's thoughts
2 there, but, because I think there is a logical break in the
3 bill or in the conception of the draft as we have it, where
4 we recognize we really do not know and cannot foresee defin-
5 itely the needs too far ahead, although we know they are going
6 to be substantial, but we don't know just how large that will
7 be and we have got to be shooting in the dark for any figures
8 we use beyond that, and we provide for the inventory, so to
9 speak, or a study of determining our needs for the future years,
10 the next two or three years.

11 It would seem to me that, by having something like
12 Senator Cooper suggested, maybe some other language in there
13 for the next few years to encourage and to show that we are
14 definitely planning on long-range program, but, nevertheless,
15 by not having the figures in there right at that time, it might
16 be helpful in the over-all acceptance of the legislation.

17 That is generally my thought.

18 Senator Muskie. I can see the advantage of Senator
19 Cooper's proposal for two reasons. One, that the desirability
20 if we can of accommodating the Administration's views, and, two,
21 avoiding scaring Congress to death.

22 On the other hand, I wonder if it might not be possi-
23 ble to accommodate those two points and still indicate to the
24 country what we clearly believe to be the dimensions of the
25 problem.

cc-35

1 I think that a \$9 billion program just does not, even
2 though for the three years involved it does not depart too far
3 from what the Committee had been suggesting.

4 I wonder if we might consider something like this as
5 a compromise: Contract authority in accordance with the sche-
6 dule suggested by Senator Cooper, but then authorization for
7 the next two years of \$5 and \$6 billion.

8 That does not commit us to that \$5 and \$6 billion,
9 but indicates our belief as to the dimensions of the program
10 we are going to need. We can always convert that to contract
11 authority in two or three years, if that is what seems wise.

12 We are still spelling out what I think is our legis-
13 lative responsibility, the size of the effort that needs to be
14 made, but we are not committing Congress and we are not commit-
15 ting the government. The Appropriations Committee will not
16 have to consider those authorizations until we get to that
17 year.

18 So, I think there is some advantage to saying to the
19 country: "Over the next five years, what we are really talk-
20 ing about is a program that is going to involve \$20 billion in
21 Federal money and you ought to know that. All we are asking
22 you to commit now is \$9 billion over the next three years."

23 I think that might accommodate both objectives. I
24 know that is a sort of an apples and oranges mixture, but I
25 have seen apples and oranges in the same package before.

cc-36

1 Senator Boggs. I can see your point on that, Mr.
2 Chairman. I just wonder, rather than use the figures as you
3 mentioned, would it accomplish the same purpose by not using
4 the figure for the two years of appropriations that might be
5 necessary, and spell it out maybe somewhat in a report or some-
6 thing.

7 Senator Muskie. That would not give you a real tar-
8 get. What I am saying we need is a target and we don't want to
9 really use the appropriation route anyway. We want to use the
10 contract authority route and we would want to convert it to
11 some figure of contract authority after the three years anyway.

12 It might be less than \$5 or \$6 billion, although I
13 do not think any one of us really believes that.

14 In addition, what is the lead-time between contracting
15 for waste treatment plant and its actual operation?

16 Mr. Billings. As little as four and as much as seven.

17 Senator Muskie. You see, if we are going to have
18 long-range planning here, you have got to think in terms of
19 something other than three years anyway. It seems to me that
20 setting up a target in that way would not be pushing the Congress
21 into a premature commitment of \$20 billion.

22 Again, it sets the sights. If we meet our responsi-
23 bilities, our commitment, on the first of three years and that
24 \$5 and \$6 billion has enough relevance to the states and locali-
25 ties so that they are not going to be afraid to move.

CC-
37

1 Mr. Billings. Mr. Chairman, the section which relates
2 to development of waste management treatment plans talks about
3 starting in fiscal year 1975 with the application of this ad-
4 vanced technology.

5 Also the decision of the Committee to begin to make
6 grants for separation of storm and sanitary sewers after the
7 beginning of fiscal year 1975 relates to this authorization.

8 Also whatever decisions are made relative to turning
9 the screws on implementation of either a national standard or
10 a national water quality standard or a national effluent stan-
11 dard will really come around fiscal 1975 and 1976.

12 The staff believes that if the plans are going to be
13 made, the decision will be made now and have to be turned on in
14 those years and the states and local governments are going to
15 have to be able to anticipate the level of Federal funding con-
16 siderably farther in advance than just three years.

17 Senator Muskie. Just two years really.

18 Senator Tunney. Mr. Chairman, I feel that the case
19 as made by you as far as planning is concerned is a very persua-
20 sive one. I just do not see how we can expect local governmen-
21 tal officials to program in their own budgets the kind of ex-
22 penditures that would be necessary unless they have some idea
23 of what the sense of Congress is in regard to long-range commit-
24 ment of funds.

25 Whereas I could not agree more with Senator Cooper

cc-38

1 that we do not want to scare the Congress or the Administration
2 to the point that they are going to reject this legislation and
3 that we should limit the contract authority to the first three
4 years, I do feel that we ought to have some expression of com-
5 mitment by the Committee and by the Congress as to what a five-
6 year program is going to be.

7 Senator Muskie. Is there any further discussion?

8 Senator Boggs. Mr. Chairman, I would like to direct
9 this to the Committee, but to Senator Cooper especially, just
10 for purposes of discussion here and reaching toward a resolution
11 of this point.

12 What would you think of limiting it to four years, a
13 four-year program, instead of the three years as you suggested,
14 and knock it off there with \$5 billion and no fifth year, and
15 then write something as to the future about authorizations as
16 may be needed as revealed by Section 209 perhaps as to plans
17 for the future?

18 Do you think that might be ---

19 Senator Cooper. I know we are all trying to accommo-
20 date. All of us are. I think we have all agreed through all
21 these hearings that a larger amount of money is going to be
22 needed than the Administration proposed and we want to meet
23 that goal.

24 There have been questions raised as to the capability
25 of industry itself to do more than the Administration proposed.

cc-39

1 We are going to vote and I want to move it along.

2 I would make one other suggestion. Keep the three-
3 year projection, two, three, and four, and then write something
4 in the bill under Section 209 which requires the cost estimates
5 to be made for different reasons, for allocation, authorization,
6 for fiscal years 1975 and following.

7 That might write more and it might write less within
8 our Committee report. I think all of us would agree, at least
9 based on the information available to us now, \$5 billion a year
10 will be required or \$5 and \$6 billion will be required in fis-
11 cal years 1975 and 1976.

12 We have gone all around it, but I would still like to
13 vote on three years.

14 Senator Boggs. Senator, what you think we should do
15 is vote on the three-year proposal first and then see how we
16 come out on that and then take a look at it? Right? I didn't
17 know whether you wanted to go to the fourth year and vote on
18 that.

19 Senator Bentsen. What about the question of contrac-
20 tual authority and authorization?

21 Senator Muskie. On the contractual authority, you
22 can make that stick. We don't need to go through the Appro-
23 priations Committees. I suppose the Appropriations Committees
24 could, by legislative language, restrict the use of that con-
25 tract authority. They have done that sort of thing before in

cc-40 1 Highway Safety, for example.

2 They would have to take positive action to block the
3 use of that contract authority, so it is the strongest mechanism
4 available to us to by-pass the Appropriations Committee on
5 the volume of Federal funds.

6 So that would put \$9 billion over the rest of this
7 fiscal year and the next two fiscal years that the communities
8 could count on, unless the Appropriations Committee took that
9 positive step.

10 Thereafter, the next two years, we would have authorized
11 it, but it would be like the authorizations we have traditionally
12 had. Appropriations Committees quite often do not
13 honor, as they did not in this program from 1966 to 1970. They
14 appropriated only a minor fraction of what we authorized.

15 By putting these authorization figures in here, if we
16 did nothing else, then the Appropriations Committee would have
17 the problem for those two fiscal years and could either honor
18 the full amount or discontinue the program at the level we would
19 have established in these three years and anything else.

20 I would assume that this Committee would submit an Act
21 to implement the intent of those last two years, but there would
22 be nothing automatic about it and it would be subject to the
23 Appropriations Committees.

24 The Appropriations Committee is not likely, I do not
25 think, without some prodding of public opinion, the cities, and

cc-41 1 us, to rise to that new level, so we would have to work the
2 case all over again.

3 Really, about all that it would amount to, I think,
4 is an indication of what this Committee believes the scope of
5 the program will be.

6 Senator Tunney. Would you anticipate challenges on
7 the floor by the Appropriations Committee?

8 Senator Boggs. I was coming to that.

9 Senator Muskie. Well, I would expect there might,
10 although this is a very sexy program now and the Appropriations
11 Committee ---

12 Senator Boggs. Mr. Chairman, may I speak to that
13 point just a minute, because it has me torn up inside as a
14 member of the Appropriations Committee.

15 I know how they feel about being by-passed. They
16 immediately take a reaction against the program. Now, this is
17 a program that the Chairman of the Appropriations Committee,
18 for example, has really been all out for.

19 They have given us every penny we have asked for. I
20 was wondering, if the Chairman hasn't already done it, would it
21 be worthwhile, before we really make a decision on this, for
22 you maybe to discuss it with him? What do you think?

23 Senator Bentsen. You know what the reaction will be.

24 Senator Muskie. No. It would be a negative reaction
25 because the point of view he might feel reluctant to insist upon

cc-42 1 on the Senate floor would be one he would be very happy to insis-
2 upon in a private conversation with me, so I do not think it
3 would work. I think you would just get a negative reaction.

4 Senator Boggs. But we are going to have a problem on
5 this point, I believe, a serious problem.

6 Mr. Billings. And, most certainly, the House ---

7 Senator Boggs. I happen to be a member of the Appro-
8 priations Committee. This is my first love, so to speak.

9 Senator Muskie. Which may be another argument for the
10 compromise I proposed, because you are not taking break out of
11 their hands.

12 Senator Bentsen. That is what I was seeking, the
13 pragmatic results of this as far as the Appropriations Commit-
14 tee.

15 Senator Muskie. I guess we have a vote on the floor,
16 but could we vote on the three-year thing knowing what the other
17 options are? That will give us some clue as to where to go.
18 Then we could come back and consider the other options, unless
19 this resolves the issue.

20 Senator Randolph. You mean a vote now before we go?

21 Senator Muskie. Yes. Could we, Mr. Chairman, on the
22 three-year option, just so we could see how the Committee votes?

23 Senator Randolph. Do we have a question?

24 Senator Cooper. I would like to vote now. I am going
25 to make a big speech right after this.

cc-43

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Senator Boggs. There is a vote up there.

Senator Bentsen. It is the Proxmire Amendment.

Senator Muskie. The question is Senator Cooper's proposal of the three-year program of \$2, \$3, and \$4 billion a year, contract authority. I would follow that up and I would commit myself to follow that up with my proposed compromise, so that you have a chance to vote on that.

Senator Randolph. Are we understanding of the vote? We will have a roll call vote.

Mr. Huyett. Senator Baker?

Mr. Jordan. Yes, sir. I did discuss that with Senator Baker. There were a number of questions we did discuss this morning and that is one of them. He does support it.

Senator Randolph. Are you voting Senator Baker aye?

Mr. Jordan. Yes.

Mr. Huyett. Senator Baker, aye. Senator Bayh?

Senator Muskie. No.

Mr. Huyett. Senator Bayh, no. Senator Bentsen?

Senator Bentsen. Aye.

Mr. Huyett. Senator Bentsen, aye. Senator Boggs?

Senator Boggs. Aye.

Mr. Huyett. Senator Boggs, aye. Senator Buckley?

Senator Buckley. Aye.

Mr. Huyett. Senator Buckley, aye. Senator Cooper?

cc-44

1

Senator Cooper. Aye.

2

Mr. Huyett. Senator Cooper, aye. Senator Dole?

3

Senator Cooper. Aye.

4

Mr. Huyett. Senator Dole, aye. Senator Eagleton?

5

Senator Eagleton. No.

6

Mr. Huyett. Senator Eagleton, no. Senator Gravel?

7

Senator Muskie. I guess we have no word.

8

Mr. Huyett. Senator Jordan?

9

Senator Randolph. No.

10

Mr. Huyett. Senator Jordan, no. Senator Montoya?

11

Senator Randolph. No.

12

Mr. Huyett. Senator Montoya, no. Senator Muskie?

13

Senator Muskie. No.

14

Mr. Huyett. Senator Muskie, no. Senator Stafford?

15

Senator Stafford. Aye.

16

Mr. Huyett. Senator Stafford, aye. Senator Tunney?

17

Senator Tunney. No.

18

Mr. Huyett. Senator Tunney, no. Senator Weicker?

19

Senator Cooper. Aye.

20

Mr. Huyett. Senator Weicker, aye. Senator Randolph?

21

Senator Randolph. No.

22

Mr. Huyett. Senator Randolph, no.

23

According to the vote, the ayes have it 9 to 8. I

24

would like to run over these again, if you will bear with me
just a minute.

25

cc-45

1 Senator Randolph, no; Senator Baker, aye; Senator
2 Bayh, no; Senator Stafford, aye; Senator Bentsen, aye; Sena-
3 tor Boggs, aye; Senator Buckley, aye; Senator Cooper, ayr;
4 Senator Dole, no; Senator Eagleton, aye ---

5 Senator Eagleton. No. I was "no".

6 Mr. Huyett. Senator Eagleton, no; Senator Jordan, no;
7 Senator Montoya, no; Senator Muskie, no; Senator Tunney, no;
8 Senator Weicker, aye.

9 Senator Muskie. Senator Gravel's staff member is
10 checking on his vote. We can check with Senator Gravel on the
11 floor, as we have a vote, if there is no objection to that.

12 Senator Eandolph. Is this vote what now, as you
13 have read it?

14 Mr. Huyett. The amendment would carry 9 to 8. I
15 mean 8 to 7 to limit the authorization and contract authority
16 to three years.

17 Senator Randolph. The vote as taken here is 8 to 7
18 for the amendment that is offered by Senator Cooper. I will
19 have to see if we can ---

20 Senator Muskie. Senator Gravel is with me, so it is
21 a tie vote.

22 Mr. Huyett. Tie vote.

23 Senator Randolph. Anybody else who hasn't voted?

24 Senator Muskie. If there is a tie vote, the amend-
25 ment loses.

cc-46

1 Senator Bentsen. That is correct.

2 Senator Randolph. The amendment fails for lack of
3 majority.

4 (Whereupon, at 3:45 p.m., a recess was taken until
5 4:10 p.m.)

6 Senator Muskie. Senator Boggs?

7 Senator Boggs. Mr. Chairman, when we broke up we had
8 just had a vote on the proposal by Senator Cooper to limit the
9 financing to three years: 1972, \$2 billion; 1973, \$3 billion;
10 and 1974, \$4 billion.

11 That was a very close vote. I understand it was a
12 tie vote and, therefore, his amendment failed. In the course
13 of the discussion on the amendment, as between Senator Cooper's
14 amendment which generally was not exactly the Administration
15 position -- The Administration position had been \$2, \$2, and \$3
16 billion, I understand. \$2, \$2, and \$4 billion. I am sorry. \$2,
17 \$2, and \$2 billion. This was his modification of it.

18 In the course of the discussion I had proposed as some
19 sort of a compromise, at least for discussion purposes, that,
20 because I did not think that Senator Cooper's amendment, just
21 guessing, would carry, we might go to a four-year period: \$2,
22 \$3, \$4, and \$5 billion, so that 1972 would be \$2 billion,
23 1973 would be \$3 billion, 1974 would be \$4 billion, and fis-
24 cal 1975 would be \$5 billion, for a total of \$14 billion, and
25 hold the total amount down that way. This is contract

cc-47

1 authority.

2 I think that, since Senator Cooper's proposal did not
3 carry -- I voted for it myself -- I would like to offer this
4 and see what we can do with it, at least for discussion pur-
5 poses, and ask for a vote, if we sense that that would be
6 desirable.

7 Senator Muskie. Well, my own reaction to it is that,
8 one, the vote being as close as it was, it is always my instinct
9 to try to find accommodation or a basis for accommodation.
10 Secondly, I proposed as a counter to Senator Cooper a three-
11 year contract authority plus two-year authorization.

12 It is sort of a cats and dogs deal. I could take
13 either that or, I think, this one as a basis for accommodation.
14 I think if we take either one that we ought to indicate in
15 addition in the Committee report a strong conviction as to
16 what the dimensions of the problem are and what we think the
17 efforts are going to have to be at the end of this period.

18 I could take either approach. I am willing to support
19 this as a compromise. There was a tie vote and technically that
20 amendment lost. I think we do want to get the strongest support
21 we can because, where we are likely to have a fight on the floor
22 on the contract authority, we want to have maximum Committee sup-
23 port behind this.

24 If this would generate maximum Committee support, I
25 am agreeable.

cc-48

1 Senator Boggs. If there is no other suggestion, I
2 would ask for a vote on it, Mr. Chairman.

3 Senator Muskie. All right. Let us have the roll call
4 vote.

5 Mr. Huyett. We will have the roll call vote. Sena-
6 tor Baker?

7 Senator Boggs. I have Senator Cooper's position. I
8 had better give it for the benefit of all the members. I talked
9 to Senator Cooper about this or he called me over and talked to
10 me about it.

11 He said that he would like to stick to his proposal
12 and, therefore, would vote "no" on this. I don't have any other
13 proxy, but I do have Senator Cooper's proxy.

14 Mr. Huyett. Senator Baker?

15 Senator Baker. No.

16 Mr. Huyett. Senator Baker, no. Senator Bayh?

17 Senator Muskie. He would vote "aye".

18 Mr. Huyett. Senator Bayh, aye. Senator Bentsen?

19 Senator Bentsen. Aye.

20 Mr. Huyett. Senator Bentsen, aye. Senator Boggs?

21 Senator Boggs. Aye.

22 Mr. Huyett. Senator Boggs, aye. Senator Buckley?

23 Senator Buckley. No.

24 Mr. Huyett. Senator Buckley, no. Senator Cooper?

25 Senator Boggs. No.

cc-49

1 Mr. Huyett. Senator Cooper, no. Senator Dole?
2 Senator Eagleton?

3 Senator Muskie. He would vote "aye".

4 Mr. Huyett. Senator Eagleton, aye. Senator Gravel?

5 Senator Muskie. He would vote "aye".

6 Mr. Huyett. Senator Gravel, aye. Senator Jordan?

7 Senator Muskie. I don't have the proxy.

8 Mr. Huyett. Senator Montoya?

9 Senator Muskie. I have that proxy in his absence, so
10 I vote "aye".

11 Mr. Huyett. Senator Montoya, aye. Senator Muskie?

12 Senator Muskie. Aye.

13 Mr. Huyett. Senator Muskie, aye. Senator Stafford?

14 Senator Stafford. Aye.

15 Mr. Huyett. Senator Stafford, aye. Senator Tunney?

16 Senator Tunney. Aye.

17 Mr. Huyett. Senator Tunney, aye. Mr. Chairman isn't
18 here. As it stands now ---

19 Senator Boggs. Mr. Chairman, if I may interrupt, I
20 was just advised by Mr. White, Senator Dole's staff assistant,
21 that he is on his way right down here and he would vote "aye"
22 on this. Is that correct?

23 Mr. Huyett. You are voting his proxy "aye"?

24 Senator Boggs. Yes.

25 Mr. Huyett. Senator Dole, aye. The ayes have it 10

cc-50 1 to 3.

2 Senator Muskie. That is good, solid support there.
3 We can go to the floor with that.

4 Senator Boggs. We can always review it.

5 Mr. Billings. The staff understands this to be con-
6 tract authority through \$5 billion?

7 Senator Muskie. I think that leaves, Mr. Chairman,
8 just one question unresolved: The Eagleton Amendment. We have
9 agreed to take that up tomorrow. I wonder if it would be
10 appropriate to leave the adoption of Title II with that one
11 question reserved and then we can wrap it up.

12 I don't want to foreclose anything.

13 Senator Boggs. I think that is a good idea.

14 Senator Randolph. I would like to entertain a motion
15 that I do feel is appropriate. Senator Muskie, if you would
16 state it.

17 Senator Muskie. Yes. I thought, Mr. Chairman, we
18 have gone through, I think, every question in Title II except
19 for the Eagleton Amendment. I do not want to foreclose any-
20 thing, but I thought in the interests of beginning to wrap this
21 up that I would like to move -- and I withdraw the motion if
22 anybody objects -- that we adopt Title II subject to the one
23 resolution on the Eagleton Amendment which we could agree to
24 take up tomorrow.

25 Senator Boggs. No objection so far as I am concerned,

cc-51 1 except that we do reserve the Eagleton Amendment. Senator
2 Cooper wants to be here.

3 Senator Muskie. There is one other reservation and
4 that is the direction we gave the staff earlier to try to work
5 out that language on reimbursement, but that is a very narrow
6 question.

7 Senator Randolph. Well, you have heard the motion.

8 Senator Dole. Second.

9 Senator Randolph. Senator Dole seconds the motion.
10 All those in favor say "aye".

11 (A chorus of ayes.)

12 Senator Randolph. Are there those opposed?

13 Senator Baker. What are you going to do with the
14 Eagleton Amendment? Take it up when he gets here? Is that it?

15 Senator Randolph. Well ---

16 Senator Muskie. Can we go off the record?

17 Senator Randolph. Yes.

18 (Discussion off the record.)

19 Senator Baker. This is on the record.

20 Senator Randolph. Oh. On the record.

21 Senator Baker. Since that has been mentioned, it may
22 be I will have remarks to make. Otherwise, it will be "aye" for
23 the adoption of Title II. I assume that there is no prejudice
24 against my doing so nor voting as may seem appropriate.

25 Senator Randolph. We have that reservation for all

cc-52

1 members, of course. Thank you.

2 Senator Muskie. Do we have a question to deal with on
3 the replacement?

4 Mr. Billings. No, Mr. Chairman. In the morning
5 agenda, the staff included a definition of the word "replace-
6 ment" to indicate to the members the intent of the language as
7 expressed in that section which related to user charges, but I
8 know of no question that has been raised.

9 I think the next thing is this question, Senator
10 Muskie.

11 Senator Muskie. There is a question, Mr. Chairman,
12 that Senator Jordan raised, I think, sometime last week. I
13 think Senator Boggs is also interested in this, so we might as
14 well raise some relatively minor point.

15 Mr. Billings. Page 78.

16 Senator Muskie. Should we wait until Senator Jordan
17 is here? I think we can agree to this matter. If not, we can
18 put it off until Senator Jordan is here.

19 Senator Boggs. On replacements?

20 Mr. Billings. On page 78, the question of Administra-
21 tor specifying the time for compliance with an order not to ex-
22 ceed 10 days.

23 Senator Boggs. Oh, yes.

24 Mr. Billings. You and Senator Jordan had raised a
25 question as whether this would be, from a technical point of

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1 view, adequate time in which to comply. The recommendation was
2 made that that time be not to exceed 30 days.

3 The staff has consulted with the Administration and
4 they have no objection to that.

5 Senator Boggs. Thirty days go fast.

6 Senator Muskie. If it is without objection, we will
7 adopt that change. Is there anything else?

8 This is another small item. It is not minor, but it
9 is small.

10 Mr. Billings. Page 68.

11 Senator Muskie. It has to do with the Bentsen Amend-
12 ment.

13 Senator Bentsen. I hope you didn't use the word
14 "minor" in relationship to that amendment.

15 Senator Muskie. I said "important", but small.

16 Senator Tunney. Does Committee print 2 have more than
17 66 pages? I do not have all the pages.

18 Senator Muskie. California never does well in the
19 second half.

20 Senator Tunney. Which is pretty close to being true.

21 Mr. Billings. Mr. Chairman, the language that the
22 staff has distributed would appear on page 68 -- would appear
23 on the top of page 69 between lines 2 and 3 and would be a sub-
24 stitute for the language which appears on lines 14 through 21
25 which is in italics.

cc-54 1 The language, 14 through 21, in discussion with the
2 Administration and others, would provide for an across-the-board
3 modification of a standard which was based on available techno-
4 logy.

5 The judgment of the Administration and others that
6 a modification of the standard or adjustment of the standard
7 should be made on a case by case basis, rather than on an
8 across-the-board basis.

9 Because the question of adjustment would not come
10 with a new source, but with an existing source which was modi-
11 fied and thus fell under this provision, the revised language
12 limits the appeal on the basis of benefits to cost to a source
13 which is subject to the provision as a result of modification.

14 Senator Boggs. What does that mean?

15 Mr. Billings. What that means, Senator Boggs, is that
16 if you are a plant which, as a result of modification, changes
17 the amount of -- so as to increase the amount of pollutants you
18 release on the environment and thus become a new source for the
19 purposes of this section, you can appeal the application of this
20 section to you on the basis of social and economic cost versus
21 social and economic benefits.

22 Senator Bentsen. On a specific case.

23 Mr. Billings. On a case by case basis.

24 Senator Tunney. Rather than attacking the whole stan-
25 dard.

cc-55

1 Senator Bentsen. I have no objection to that, Mr.
2 Chairman.

3 Senator Muskie. Without objection, that change is
4 agreed to.

5 Mr. Billings. Mr. Chairman, on page 70, while the
6 members are there, I call attention to the fact that the staff
7 has revised the language on toxic standards to provide rather
8 than for a statutory prohibition a promulgation of an effluent
9 standard which may include a prohibition to discharge as recom-
10 mended by the members.

11 Senator Baker. Say that again, will you?

12 Mr. Billings. That was on the top of page 70, Para-
13 graphs 1 and 2.

14 Senator Tunney. Does that represent a change from the
15 Committee Print 1?

16 Mr. Billings. Yes, sir. It represents a change from
17 Committee Print 1 as was agreed upon at an executive session
18 about 10 days ago.

19 That maintains the burden of proof on the discharger
20 that it does not start out with the statutory prohibition.

21 Mr. Chairman, on page 87 of the print -- With Senator
22 Baker here, I would like to get some guidance for the staff.
23 Senator Baker, page 87 of the print. On the oil pollution sec-
24 tion, the staff has attempted to ---

25 Senator Boggs. Eighty-seven?

cc-56

1 Mr. Billings. Eighty-seven. -- to develop some lan-
2 guage which would establish a liability for the discharge of a
3 hazardous substance which was not subject to clean-up. As you
4 recommended, this language is now being reviewed by the Coast
5 Guard.

6 In essence, the language says that the Administrator
7 shall establish a rate of penalty not to exceed \$5000 per bar-
8 rel of discharge to be imposed under Paragraph C of this sub-
9 section for each hazardous substance which he determines is not
10 subject to removal.

11 He shall establish such penalty based on the toxicity,
12 degradeability, and disposal characteristics of such substance.
13 It sets as a minimum a \$50,000 fine against the discharge it-
14 self, which is what was in the previous print.

15 Senator Bentsen. An insurable risk?

16 Mr. Billings. In this situation, no. The penalty
17 would be insurable, but the rate of penalty to be determined by
18 the Administrator would be related -- would relate to the poten-
19 tial risk associated with the discharge, not to the insurability
20 of that risk.

21 We have created a situation where you can't clean some
22 thing up, even though it may be disastrously hazardous, you have
23 less liability than if you can clean it up.

24 There are certain things which present such a tremen-
25 dous risk to the water environment that you may want to in fact

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1 discourage their shipment without extra precaution; unless you
2 have some measure of economic penalty, you are not going to have
3 the kind of caution to hauling those products that need be.

4 Let me cite an example, Senator Bentsen. There was a
5 collision on the Great Lakes. One of the vessels, the vessel
6 which was collided with, was carrying 55-gallon drums of potas-
7 sium cyanide in pellet form.

8 Had those been discharged into the area -- water area
9 where the collision occurred, very likely, because of the toxic
10 pollutant nature of the river, cyanide gas would have been re-
11 leased into the Detroit metropolitan area.

12 It could have been in very large amounts. Who knows
13 what kind of disaster it might have been? The point is that
14 there is no way to encourage transportation practices which will
15 minimize the potential of these things getting in the water en-
16 vironment.

17 Senator Tunney. You mean through this legislation?

18 Mr. Billings. There is no present way of doing it.
19 Senator Baker's proposal, I think, is designed to get this risk
20 considered by the hauler.

21 Senator Tunney. Could the Department of Transporta-
22 tion issue regulations which would have an impact on the situa-
23 tion for hauling pellets?

24 Senator Baker. Has the authority been given to anyone
25 to prohibit the hauling of certain material?

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1 Mr. Jorling. There are -- There is authority in the
2 Department of Transportation to regulate the carriage of certain
3 substances, certain categories of hazardous substances and ex-
4 plosives.

5 It has been deficient in many respects and the Admin-
6 istration has proposed legislation which is presently pending in
7 the Commerce Committee to improve the authority of the Secretary
8 of Transportation and the Coast Guard to regulate port opera-
9 tions as well as the actual shipping, navigation operations of
10 these kinds of materials.

11 There is limited authority now, therefore, but more
12 being sought.

13 Senator Tunney. How does this language compare?

14 Mr. Jorling. This would be completely parallel to
15 that. That would be affirmative regulation over the operation,
16 setting standards on performance for certain kinds of operations.
17 This simply says: "If you discharge this material, you become
18 eligible for penalty based on the amount of the discharge or
19 \$50,000, whichever is greater."

20 It does not go to the requiring of the owner-operator
21 to use certain kinds of materials in the transport of certain
22 packaging or whatever. It is simply a negative inducement that
23 should prompt a higher standard of care on their part to avoid
24 this kind of liability.

25 Senator Tunney. It has no relationship to reasonable

cc-59 1 care in shipment. It poses an absolute standard.

2 Mr. Billings. There are standard of liability in the
3 law. There are certain offenses under the pollution section.
4 If you can show the discharge is caused by an act of God or an
5 act of war or an act of a third party or an act of the U. S.
6 government, then he can be exempt from this liability, so basic-
7 ally you have a standard of negligence, except the burden of
8 proof is on him to show that one of the other causes -- there
9 was another cause which caused the discharge.

10 Senator Bentsen. I don't suppose -- If you had an
11 atomic core to be transported, would you get in a situation
12 where possibly it would be immobilized or couldn't be moved
13 or not?

14 I haven't read this language.

15 Mr. Billings. The transportation of radioactive sub-
16 stances, I think, is covered by other law. There is also an
17 international convention which regulates sea shipment. There
18 is a special insurance liability fund and so on.

19 Senator Bentsen. I see.

20 Senator Tunney. So this is merely a provision which
21 shifts the burden of proof? It does not provide for absolute
22 liability.

23 Senator Baker. That is not really so. We -- If we
24 are tracking the provisions, we create by designation absolute
25 liability with certain exceptions. There is not merely a

cc-60

1 shifting of the burden of proof.

2 Mr. Jorling. The burden is on them to prove -- I don't
3 know how to say this -- that the discharge was not caused solely
4 by act of God, act of war, act of third party, or act of the
5 United States, so that any centilla of contribution by the dis-
6 charger brings them under the full liability.

7 Senator Baker. Or some other intervening force.

8 Senator Bentsen. How long is that amendment?

9 Mr. Billings. The language is very short.

10 Senator Bentsen. Mr. Chairman, would you mind his re-
11 stating that? It might answer some questions I have in mind if
12 I could just hear it.

13 Mr. Billings. Well ----

14 Senator Randolph. What page are we on?

15 Mr. Billings. We are on page 87, Mr. Chairman. The
16 language of "ii" which has been revised because the staff had
17 not written a complete sentence now reads as follows:

18 "The Administrator shall establish the rate of pen-
19 alty not to exceed \$5,000 per barrel of discharge to be imposed
20 under Paragraph C --" which is the next paragraph -- "of this
21 sub-section for each hazardous substance which he determines is
22 not subject to removal.

23 "He shall establish such penalty based on the toxicity
24 degradeability, and disposal characteristics of such substance."

25 Then read on to Paragraph C which establishes the

cc-61

1 liability.

2 Senator Baker. May I say a word about the general
3 philosophy? We ought to approach what we are going to do here
4 with our eyes wide open. At the time of the Oil Spill Bill, we
5 made these trade-offs: First, that we would impose absolute
6 liability subject only in certain very narrow exceptions so
7 that there would be responsibility financially on the part of
8 the shipper for the cost of clean-up, as distinguished from
9 third-party liability.

10 The Act specifically does not include third-party
11 liability which is tried and tested on the regular maritime
12 court concept.

13 We then decided that as a matter of equity, if we want
14 to have absolute liability for clean-up costs, it was only fair
15 and equitable to limit the liability so that it could be pro-
16 vided against by insurance coverage. We did that.

17 This is really an outgrowth of the same concept in
18 that it too now deals only with clean-up, not with third-party
19 liability.

20 In this case, however, unlike oil, we have certain sub-
21 stances that cannot be cleaned up, so in order to provide a dis-
22 incentive for negligent conduct in the carrying of uncleanable
23 substances, we provided a \$5,000 penalty, not to be less than
24 \$50,000.

25 Once again, the trade-off in the equity, if there is

cc-62 1 equity, is that clean-up is distinct from third parties. That
2 would impose liability and which we must limit liability. That
3 is the general concept of it.

4 Senator Tunney. Is the word "barrel" defined?

5 Mr. Jorling. The word "barrel" is defined in the
6 statute.

7 Senator Tunney. Thank you. What would happen if you
8 were talking about goods that were not being shipped in barrels?

9 Mr. Jorling. It is a quantity, rather than a barrel
10 of discharge. It is 42 U.S. gallons at a certain temperature.
11 Whether it is in a barrel or not, it is 42 gallons. If there
12 were 42 gallons discharged, it would be a barrel.

13 Mr. Billings. Forty-two U. S. gallons at a certain
14 temperature in a 55-gallon barrel.

15 Senator Bentsen. A maximum of \$5,000 a barrel or not
16 less than \$50,000 per instant?

17 Senator Baker. Isn't that right?

18 Mr. Billings. \$5,000 per barrel discharge or \$50,000
19 per incident, whichever is greater.

20 Senator Baker. Greater or lesser?

21 Mr. Billings. In other words, the minimum fine per
22 incident would be \$50,000. If you discharged more than 10 bar-
23 rels, that would subject you to the per barrelage penalty.

24 Senator Baker. The fallacy in the thing -- The only
25 remaining fallacy that I see is that "barrels" is an artificial

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1 measure of potential damage of an uncleanable culpable substance.
2 You are getting into the matter of whether or not it is actually
3 contained in a 55-gallon container or whether or not you are
4 talking about concentration or equivalents or what.

5 It would be far better if we could come up with some
6 further discretionary determination.

7 Senator Buckley. I thought that we were heading in
8 that direction in our earlier discussions, that the Administrator
9 would set a limit including: "Thou shalt not move this parti-
10 cular item."

11 Senator Baker. I don't know about that part, but I
12 think the idea of publishing the penalty rate on substances as
13 a part of his initial rule-making is included in the concept of
14 this.

15 That would be reviewable, as any other rule-making
16 procedure by the Administration.

17 Mr. Jorling. The purpose of the \$5,000 is just to
18 give some limit to the discretionary authority of the Adminis-
19 trator in that rule-making.

20 Mr. Billings. As I said, we are checking with the
21 Coast Guard. They are reviewing the language in order to make
22 any recommendations. One of the things we asked them to look at
23 was this question of the unit which we are going to establish.

24 They haven't had any adverse reaction at this point.

25 Senator Muskie. Are there any other questions?

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1 Senator Baker. There is a question of constitutional-
2 ity. I don't know if it is severe enough for us to be really
3 concerned about it, but in oil you have a relationship between
4 financial responsibility to clean it up. Here we don't. This
5 is a pure fine and it is not related to the cost of cleaning up.

6 It may be that we are getting into an area which may
7 be a violation of the due process clause in advancing that fine.
8 We must realize that that is a theoretical possibility, but I
9 think it is worth a try.

10 Senator Muskie. Well, if we get a couple of strict
11 constructionists on the Court, we may be out. If there are no
12 further questions, I think we might put the question, Mr. Chair-
13 man.

14 Senator Randolph. All right.

15 Senator Muskie. This is on the question of adopting
16 the language at page ---

17 Mr. Billings. Page 37 as read as a substitute -- the
18 language as read, Paragraph ii, line 9 through 13, and the lan-
19 guage as it appears on lines 14 through 21, with the last line
20 reading: "\$50,000 per discharge."

21 Should I read the language in its entirety?

22 Senator Randolph. No, I don't think so. Is this a
23 matter on which we want to have a vote? Is that agreeable?

24 (A chorus of ayes.)

25 Senator Randolph. Thank you very much. Where do we

cc-65 1 stand now?

2 Senator Muskie. What else do we have?

3 Mr. Billings. Mr. Chairman, obviously we have the
4 question of standards. There is the question on citizen suits.
5 I am advised that Senator Bayh will be here tomorrow afternoon
6 and would recommend therefore that the question on citizen suits
7 be deferred until tomorrow afternoon.

8 The only other issue that the Administration raised
9 that does not fall into the question of standards is on page
10 111 on emergency powers.

11 The Committee -- Sub-committee recommended that the
12 emergency powers for the Administrator to seek immediate abate-
13 ment injunction against imminent substantial danger be limited
14 to the health of persons.

15 The Administration has recommended that it be the
16 health or welfare of persons, as appears in the italics on
17 line 13, page 111.

18 The implication of that is -- They point out the
19 situation where there is a discharge of dye, for example, which
20 has no immediate effect on the health of persons and yet would
21 have a substantial effect on the beaches of a resort which would
22 lose business as a result of the discharge and where an imme-
23 diate injunction could cease that discharge.

24 It would be welfare of persons. It wouldn't be the
25 general health and welfare concept. It would be the welfare of

cc-66

1 persons.

2 Senator Tunney. I agree. I move welfare.

3 Senator Muskie. Moved and seconded then.

4 Senator Randolph. What was the motion please?

5 Senator Tunney. To adopt the language "health and
6 welfare".

7 Senator Randolph. It bothers me and I want to talk
8 on it just a moment. I am not sure what "welfare" means. I
9 realize that, if you have done something damaging to the live-
10 lihood of someone, I suppose that would be the use of the word
11 "welfare".

12 I am not certain that that is the word we want to use.
13 Now, I am only raising it because I am just not certain that it
14 is the right word.

15 Does anyone else have any question mark in their think-
16 ing on it? Maybe you are all satisfied.

17 Senator Boggs. No. I did have, Mr. Chairman, but
18 they limit it here with the next two words: "of persons in-
19 volved". I think that is an explanation of the limitation,
20 instead of the general welfare.

21 Senator Randolph. Remind me, Ed or Leon. What did
22 we do in the air legislation?

23 Senator Muskie. Well, there it was "health", I think.

24 Senator Randolph. That is what I recall.

25 Senator Baker. We took it beyond that.

cc-67 1 Senator Muskie. Did we? The emergency powers?

2 Senator Baker. No, we didn't either. I am sorry.

3 You are right. I am sorry.

4 Senator Tunney. The point, Mr. Chairman, that Leon
5 made was that you can have a question of a polluter dumping dye
6 into the waterways and have no effect on the health of people,
7 but it would stain the beach.

8 It was the thinking of the Administration that it
9 would have the power to be able to move in, particularly under
10 these circumstances. The word "welfare" ----

11 Senator Randolph. John, I understand that. I don't
12 like the word "welfare" in connection with this sort of a sit-
13 uation.

14 Senator Tunney. Well-being?

15 Senator Randolph. I think we ought to be able to find
16 some other more expressive word in this. I may be in error
17 about it now.

18 Senator Muskie. If there is a clear distinction be-
19 tween general welfare and welfare of persons, would that help
20 to alleviate your problem?

21 Senator Randolph. Yes, it would. It would, Ed.

22 Mr. Guard. Their bill is health of persons.

23 Senator Muskie. And welfare?

24 Mr. Jorling. It was limited to the ----

25 Senator Muskie. I don't think we would have a com-

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1 parable kind of damage with air.

2 Senator Boggs. Would "detriment to persons" be a bet-
3 ter expression? I was thinking of somebody getting something
4 into the water, as they do frequently in the Brandywine River,
5 and everybody starts ringing the phone and you can't drink the
6 water and you can't taste it.

7 It takes two or three days almost to get it out, even
8 though they do everything on earth to purify it. They announce
9 on the radio that it is not endangering anybody's health, but it
10 just about drives everybody mad.

11 Senator Muskie. Could I ask? Is "detriment to per-
12 sons" a word?

13 Mr. Billings. The concept of health of persons has a
14 certain amount of law behind it.

15 Senator Muskie. How about welfare of persons?

16 Mr. Billings. In essence, with almost non-health of
17 persons affected, it would almost have to be an economic effect,
18 I suppose. Welfare of persons generally denotes some effect on
19 their economic well-being.

20 Mr. Huyett. Do you mean their earning ability?

21 Mr. Billings. This is what you would generally assume
22 it to be.

23 Senator Muskie. It could be environmental effect too.

24 Mr. Billings. It would have an economic effect in
25 this sense.

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1 Senator Muskie. If it were a beach, you might have an
2 environmental effect, say, on bogs that you would not want to
3 accept if it is avoidable. If you have got the enforcement
4 powers to prevent it, you ought to prevent it.

5 Senator Randolph. Leon, I wonder if down in the next
6 Sub-section B there is a need to beef up the economic situation
7 and leave it to that sub-section instead of Sub-section A. I am
8 just probing that.

9 Senator Muskie. Well, why don't we say in here, if
10 "welfare" is too loose, "health or environmental or economic"?
11 You could put "substantial".

12 Mr. Billings. We have "substantial endangerment to
13 the health or welfare".

14 Senator Randolph. That I why I was thinking if we
15 could work it into Sub-section B and not touch it there, ex-
16 cept to just say the "health of persons", and build it in this
17 next sub-section. I am just making a suggestion.

18 Although we know what we are attempting to do, I just
19 think that "welfare" is just across all boards and I do not be-
20 lieve it is the helpful word that we need.

21 Senator Muskie. Why don't we ask the staff to discuss
22 this with the Administration people again? I think it is clear
23 what we all want to do.

24 Senator Randolph. Yes.

25 Senator Muskie. And see if they can come up with some

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1 other language.

2 Senator Randolph. Is that agreeable?

3 Senator Tunney. Withdraw the motion. I was wondering
4 I had an amendment on the Tahoe situation which we weren't able
5 to take up in the Sub-committee because of a time factor. I
6 think it is the kind of amendment that probably would not be
7 objected to by members, although maybe it will.

8 I would like to at some point be able to offer that
9 before we get into the same kind of time crunch that we did the
10 last time.

11 I was wondering if I could get some sort of a feel.

12 Senator Muskie. What issue was that?

13 Senator Tunney. Lake Tahoe, which is on the agenda.
14 The last time I brought it up, it was ten minutes to go before
15 we closed up shop permanently in the Sub-committee on this bill
16 and I chose not to offer it because I just did not have a chance
17 to explain it.

18 I was wondering if I could get some sort of a feeling
19 as to when it would be appropriate to offer it, because I have a
20 feeling now as we move toward the end of this legislation -- and
21 we are going to be considering standards tomorrow -- we may get
22 to a situation that when we finish standards, we are just going
23 to want to wrap up shop again.

24 Would it be possible, Mr. Chairman, to have that amend-
25 ment put on the agenda at some point?

cc-71

1 Senator Randolph. Yes. I think some persons have
2 discussed, John, the possibility that this might overlap into
3 some other situations other than yours, some other programs.

4 I think it is a matter we don't want to pass on
5 quickly, so there is no reason why we cannot program it and
6 have it given consideration tomorrow perhaps.

7 Senator Tunney. I just wanted to raise the point.

8 Senator Muskie. Leon, do you have anything else?

9 Mr. Billings. Mr. Chairman, I think -- Tom?

10 Mr. Jorling. Yes, sir.

11 Mr. Billings. With the exception of the questions
12 which interrelate on permit program and standards, do you know
13 of any other matters in controversy in which the Administration
14 has expressed an interest or changes which we have made in the
15 bill which we should bring to the members' attention?

16 Mr. Jorling. No, with the possible exception that the
17 Coast Guard has independently conveyed some impressions and feel-
18 ing with some of the sections which affect their authority. We
19 have asked them to submit exactly what it is.

20 Except for that, I don't know of anything else. Sena-
21 tor Baker may have an amendment dealing with training facilities.
22 Other than that, no.

23 Senator Muskie. Well, I would suggest then, Mr. Chair-
24 man ---

25 Mr. Billings. One of the issues that has been raised ---

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1 I am sorry I forgot about this -- is the definition of "indus-
2 trial user" because of the questions raised about the implica-
3 tions and the terminology in Title II.

4 The staff asked the Administration for a definition
5 and the following was provided. This will be Section 210, De-
6 finitions: "As used in this Title, the term 'industrial user'
7 means those industries identified in the Standard Industrial
8 Classification Manual, Bureau of the Budget, 1967 as amended
9 and supplemented under the category 'Division D, Manufacturing'
10 and such other industrial waste producers as the Administrator
11 deems appropriate under this definition."

12 The Standard Industrial Classification Manual, Divi-
13 sion D, Manufacturing, includes almost every industry, except --
14 and I will read the following -- electric utilities, water and
15 railroad transportation, retails including shopping centers and
16 restaurants, hotels, medical facilities, construction and agri-
17 cultural activities, mining, and office buildings.

18 This then would be all of your heavier manufacturing
19 industries, but generally excludes your commercial operations,
20 your non-point sources, and your moving sources. They would not
21 be likely to be discharging into a municipal waste treatment
22 system, except the non-point sources would not be discharg-
23 ing into waste treatment systems.

24 The commercial enterprises would. I suppose the only
25 outstanding question is whether or not Division D is broad

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1 enough when you realize that it excludes retailers, hotels, med-
2 ical facilities, and office buildings.

3 Senator Muskie. The question really is -- I guess in
4 the simplest form -- is to whether these kinds of water users
5 should be included in the general class of public to be served
6 by the municipal waste treatment facilities or whether they
7 should have to make separate arrangements as an industry for
8 inclusion in the waste treatment facility with all that that
9 means under the policies we have been debating today as to capi-
10 tal costs and all the rest of it.

11 I guess the big users here, which highlight the prob-
12 lem, would be hotels, in New York City, for example, or office
13 buildings, in New York City, for example, like the World Trade
14 Center, or a large hospital.

15 Up to now, I think the program has also assumed that
16 those kinds of users are included in the users -- the service by
17 municipal waste treatment facilities. I do not have any strong
18 impulse to change that. I don't know if any of you would or
19 not.

20 Mr. Billings. Mr. Chairman, with the language "and
21 such other industrial waste producers as the Administrator
22 deems appropriate" under this definition, the Administrator
23 would have the flexibility to include a World Trade Center as
24 a part of the definition of "industrial" if that language were
25 adopted, whereas he would have the flexibility to make some

cc-74

1 determination.

2 Senator Muskie. Well, is that definition acceptable?

3 Mr. Jorling. Leon, on that last clause, the flexibil-
4 ity of the Administrator -- Should that be by regulation? Should
5 he have to go through publication, hearing, and promulgation?

6 Could it be qualified further to avoid the connection
7 with industrial waste to say "such other classes of significant
8 waste producers as by regulation the Administrator deems appro-
9 priate"?

10 Senator Muskie. I think that makes sense. That avoids
11 arbitrary decisions or protection against it.

12 Senator Randolph. Any further questions in reference
13 to the language, with the understanding?

14 Senator Muskie. Mr. Chairman, I think the staff has
15 done its best to identify all the cats and dogs here. There may
16 still be some between now and tomorrow, but, so far as I know,
17 what we will deal with tomorrow is the standards question, which
18 is a big one, the Eagleton Amendment, and then a couple of other
19 that Senator Buckley raised this morning or this afternoon, and
20 Senator Tunney's Tahoe question.

21 Senator Tunney. Will Tahoe be brought up tomorrow?

22 Senator Muskie. It is on the agenda. I don't know
23 what we will get to. I think, reserving the right of the staff
24 to bring in other cats and dogs, probably ---

25 Senator Randolph. Members ought to be allowed that

cc-75 1 privilege too.

2 Senator Muskie. I think we have probably reached the
3 end of any real constructive use of time at this point.

4 Mr. Billings. May I read the agenda? As the staff
5 understands it will be tomorrow?

6 Senator Randolph. Yes. Read it.

7 Mr. Billings. Item No. 1 would be standards and en-
8 forcement. Well, not necessarily the first one. I will read
9 them. Reimbursement, Senator Eagleton, standards and enforce-
10 ment, ocean dumping, Lake Tahoe, and the Technical Review Board,
11 is that correct, Senator Randolph?

12 Senator Randolph. Yes, if it can be discussed.

13 Mr. Billings. Are there any other amendments that
14 should be on here that the members may have?

15 Mr. Jorling. Senator Baker, tomorrow or we could
16 dispatch with that now.

17 Mr. Billings. Senator Baker has an acceptable amend-
18 ment.

19 Mr. Jorling. A brief description to see if there is
20 any objection? Do you want me to read it?

21 One of the outstanding problems in the waste treatment
22 performance is the failure to get satisfactory operation and
23 maintenance personnel. The Administration has attempted to
24 overcome this by conducting training programs authorized under
25 the Water Quality Improvement Act.

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1 One of the obstacles remaining are facilities to con-
2 duct this kind of training, because it can appropriately be
3 made only on the site of the waste treatment facility. The
4 proposal would provide that the Administrator could pick up
5 in each state, one in each state, the cost of a facility to
6 add on to a waste treatment works educational facilities for
7 operation and maintenance personnel, subject to the criteria
8 of the suitability for training operation and maintenance per-
9 sonnel and under a program of training approved by the Adminis-
10 trator.

11 It would authorize up to \$1 million per state for this
12 purpose. I don't believe the Administration has any objection
13 to it and I think it would address this point of developing
14 people so that these general waste treatment works can be con-
15 ducted on a higher level of performance than has heretofore been
16 the case.

17 Senator Baker. I might say that this is because we
18 happen to think it is a good utilization of existing facilities
19 to have somebody add on a training facility. I think it is
20 worthwhile and I feel it should be received.

21 Senator Tunney. Is \$1 million enough?

22 Senator Boggs. I was going to ask that question, for
23 example, as to the state of Delaware. Is it up to \$1 million?

24 Senator Baker. It is not to build the facility. It
25 is to add on training facilities.

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1 Senator Tunney. What about big states such as New
2 York and California?

3 Senator Muskie. One million dollars doesn't go very
4 far.

5 Senator Tunney. Is there any chance of having a
6 sliding scale for the bigger states?

7 Senator Baker. Slide up to \$1 million.

8 Senator Muskie. Is there a limit as to the number of
9 these?

10 Senator Baker. I don't think you are going to need
11 more, because what you are doing is building classrooms and
12 things with which to train operators. You are not building a
13 brand new treating plant. You are building facilities that let
14 you use that treatment plant as a training facility. That is
15 enough.

16 Senator Tunney. In other words, you are not paying
17 any money in salary. What you are doing is just building a
18 facility.

19 Senator Baker. Yes.

20 Senator Tunney. Who pays the salaries?

21 Senator Baker. The state.

22 Senator Boggs. Just give me an example, if I may ask.
23 Tennessee already has it.

24 Senator Baker. EPA has already funded it, classroom
25 facilities adjacent to the waste treatment plant, and it is in

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1 operation.

2 Senator Tunney. I ---

3 Senator Boggs. So you only need one for the whole
4 state.

5 Senator Tunney. Couldn't you go for a little bit more
6 for the big states?

7 Senator Boggs. Two facilities in the big states.

8 Senator Baker. What did you have in mind?

9 Senator Tunney. Allocation for money for staff based
10 on some sliding scale. I just wondered if we couldn't have a
11 sliding scale for the bigger states.

12 Senator Baker. What do you and Senator Buckley want?

13 Senator Tunney. I don't know. I think that you might
14 want a big state like New York or California -- \$4 million.

15 Senator Baker. Why don't we do this, Mr. Chairman.

16 Senator Randolph. Yes, sir.

17 Senator Baker. If my colleagues from California and
18 New York reconsider this resolution with the understanding that
19 if they want to check and see if the situation is modified that
20 we would be willing to consider a modification.

21 Senator Randolph. I think that is good. You check it
22 out, John, for you high-priced states.

23 Senator Tunney. Thank you.

24 Senator Randolph. Can we agree then on that under-
25 standing to have it separate? Is that agreeable?

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1 Senator Muskie. Yes.

2 Senator Randolph. All right, gentlemen. I think we
3 had best call it a day. We have run over about 10 minutes again
4 We will meet tomorrow afternoon at 2 o'clock.

5 Now, there is a vote on the Eagleton Amendment in the
6 Senate at 1 and a vote on the Mansfield Amendment at 4:30 to-
7 morrow afternoon. I am just wondering about a place of meet-
8 ing.

9 Perhaps it is a little better to meet here. Hope-
10 fully -- I don't see any reason why we can't have this room,
11 unless there is some problem. We will notify you, of course.

12 Let us then have a 2 o'clock meeting here tomorrow
13 in S.126. Thank you very much.

14 (Whereupon, the Committee was in recess at 5:10 p.m.,
15 to reconvene at 2:00 p.m. in S.126, Thursday, September 30,
16 1971.)

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